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AND

# INTERNATIONAL LAW

EDITED FOR

THE SOCIETY OF COMPARATIVE LEGISLATION

BY

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AND

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AND THE

REVIEW OF LEGISLATION

EDITED BY

Sir CECIL T. CARR, K.C.B., K.C., LL.D.

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BY

Sir CECIL T. CARR, K.C.B., K.C., LL.D.

Let observation, with extensive view,
Survey mankind from China to Peru.
SAMUEL JOHNSON.

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# ANNUAL REPORT

VISCOUNT BRUCE, who accepted the Presidency of the Society in 1937 for a period of three years, kindly extended the period owing to the conditions of war time until nearly the end of 1947. The Committee are most grateful to him for his interest in the work of the Society in which respect he represented the support accorded by the other members of the Commonwealth. The Committee were very glad that the Jubilee of the Society occurred during his term of office, so that he was able to preside over the notable gathering which assembled on December 18, 1944. It was hoped that there might be another assemblage of the members and friends of the Society upon his retirement, which had been arranged in connection with the resignation of Lord Macmillan as Chairman and his succession to the Presidency. The restrictions imposed just before the date chosen, namely November 5, the jubilee of Lord Macmillan's admission as an Advocate, necessitated the cancellation of the arrangement, much to the regret not only of members of the Society but also of the personal friends of the retiring President and the President elect, who had intimated their wish to be present. The thirteen years during which Lord Macmillan has been Chairman of the Society have been marked by a number of vicissitudes which are recorded in the Annual Reports, though at its completion the position of the Society is more firmly held than at its beginning. Under such conditions the chairmanship has been no sinecure. Besides exercising a general care of the work of the Society, Lord Macmillan has been a welcome contributor to the *Journal*. The growth and range of membership recorded in the last Annual Report has been continued and extended on a larger scale. The *Journal* of the Society under the direction of Sir Arnold McNair has taken a new lease of life marked by the inclusion of symposia upon Frustration of Contracts, and the Law in Occupied Countries—both subjects of particular interest at the present time. He has secured a wider range of contributors whose articles will enhance its reputation.

The Committee were very glad that Lord du Parcq kindly accepted their invitation to succeed Lord Macmillan as Chairman of the Council. From its membership they have lost by death during the year Viscount Bennett, who was a greatly valued link with Canada, Sir Joseph Cook, a former High Commissioner for Australia, and Sir George Knowles, who for many years had contributed an admirable summary of legislation of the Commonwealth of Australia. They are glad to have received from their Excellencies the Ambassadors of China, the Hon. Futting Tien-Hsi Cheng, and of the Argentine Republic, The Hon. Ricardo de Labougle, their gracious acceptance to join the Council, which has also been strengthened by the election of Sir Henry MacGeagh, K.C.B., Judge Advocate General, and Professor B. A. Wortley. Mr. R. Gavin succeeds Sir Algernon Aspinall after many years' active representation of the West India Committee as a member of the Executive Committee which also gains the helpful advice of Mr. K. O. Roberts-Wray, upon his appointment as Legal Adviser to the Colonial and Commonwealth Relations Office.

The annual *Review of Legislation* has been maintained under the Editorship of Sir Cecil Carr and the Committee are glad to have been assured by a number of correspondents of its practical value and the acceptability of the form of its compilation. Although it has been necessary for the Editor and Committee, in common with other users of paper, to watch carefully the scale of its production,

they are satisfied that such economies as have been made in the course of editing and typographical arrangements have not in any way affected the substance. The Committee appreciate the way in which contributors have supplied the reviews in spite of the additional amount of work falling upon them owing to post-war obligations.

The financial position of the Society has again been aided by grants from the Governments of Fiji and Trinidad. The Inns of Court and the Law Society have not yet been able to resume their support to the extent given before the war, which is a matter of some concern to the Committee especially as the increase in the costs of production has not yet been stabilized on any definite basis. Other costs have also been increased, although at the same time it must be recognized that to some extent they are also a healthy sign of progress. An additional item in the receipts which has contributed to the balance at the end of the year is the amount of the first payment from the War Damage Commission. There is still one payment outstanding in respect of the loss of the Society's premises in Elm Court. The amount has been settled but the Government has not yet authorized the payment of that series of claims.

The Committee have noted with satisfaction the Lord Chancellor's announcement of the extension of the scope of the Parliamentary Counsel's Office and the work of the Statute Law Revision Committee. The Society since its foundation has always been concerned with the form of legislation to which its founder, Sir Courtney Ilbert, made such a valuable contribution. His work " The Mechanics of Law Making " based upon material published in the Society's *Journal* is a recognized authority. Note has been made from time to time of arrangements effected by different legislative authorities to present the law in a form readily understandable by the average citizen. This development of official activities suggests that the time may possibly come when the objects of this Society will be included in them. For the present, however, its voluntary organization and close relationship with the responsible Government authorities throughout the Commonwealth and Empire is thoroughly characteristic of the British genius. In order that it may be maintained it is necessary that the work should not suffer through lack of funds for which the Committee must look to an extended membership, though they consider that the work might well justify a Government grant as one of national importance. In the pages of the review of legislation it can be seen that the legislatures are inspired by the same basic principles to secure to the individual protection of life, property, freedom of conscience and speech and the right and duty as a citizen to take part in the Government of the State.

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*13th February*, 1948.

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# INTRODUCTION

[*Contributed by* Sir Cecil Carr, K.C.B., K.C.]

The present year is the two hundredth anniversary of the birth of Jeremy Bentham whom our Society may acknowledge as its spiritual father. What more famous figure is there in the field of comparative legislation than the pioneer whom countries as far apart as Russia and Mexico invited to superintend the framing of their laws, the disciple of Helvetius and Beccaria? Did he not desire to see " a common standard by which the several systems of law prevailing in every country " might " respectively be compared and thereby their comparative excellences and defects exhibited to view "?[1] His influence upon English legislation was profound, if largely posthumous. To him and to his Utilitarian followers the nineteenth century owed a series of reforms—Peel's re-statement of English criminal law, the cutting down of the death penalty, the abolition of anachronistic restrictions upon usury, the repeal of those Combination Acts which had held back trade unionism, the centralized administration of public health and poor relief, the evolution (based on the contractual relationship) of the limited liability company and, finally, the unification of the judicature. Is the Benthamite impetus exhausted, or can we recognize in modern social legislation the conscious pursuit of what Bentham called " the sole proper all-comprehensive end," namely " the greatest happiness of the whole community, governors and governed together "? If he studied the summaries of the law-making of 1946 in the following pages, would Bentham approve or disapprove? Would he trust the governors to allow the governed a proper chance of deciding where they should find their happiness? The Utilitarians somehow combined their liberal faith in *laissez faire* with a firm belief in the benefits of centralized government. On which side of the line would they place Britain's New Towns Act, or her nationalization of coal, of civil aviation, of telecommunications and of the Bank of England? Would they manage to reconcile a " planned economy " with their ideas of individual liberty?

Whatever the answers to these idle speculations, we may be sure that Bentham would search our summaries of present-day legislation for signs of progress in what he described as " the most important art of all, the art of legislation." To-day he would see the universal adoption of many of those improvements of form which he himself so persistently advocated—the omission of the recurrent " be it enacted " at the head of each clause, the numbering of sections, the simplified citation of statutes, the shortened sentences, the use of the singular to include the plural, and of the masculine to include the feminine, and the adoption of algebraic labels like " Treasury " or " Admiralty " as substitutes for " the Commissioners for the time being of His Majesty's Treasury " or " the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom." These improvements found their way into the Act of 1850 associated with the name of Lord Brougham, a devoted Benthamite, and were reproduced (with others) in the Interpretation Act of 1889. We can observe the process still at work as far afield as the Kingdom of Tonga (see p. 105 below) in 1946. Another of Bentham's suggestions was that " appellatives," key words to which a statute gives a fixed meaning, should be listed in an index and printed in some special type. If the modern " interpretation clause," gathering together the definitions used throughout an Act, is the outcome of Bentham's idea, its acceptability was not immediate. Brougham himself, writing to Sir James Graham in 1843, spoke of " the new and pernicious insertion of the interpretation clause which makes draftsmen doubly careless and introduces doubts of its own, though intended to remove all doubts." Brickdale, a respectable authority on statutory

[1] See *Journal of Comparative Legislation*. November, 1946, p. 156.

form, described the device a few years later as " the recourse either of over-caution or indolence." In 1875 the Select Committee on Acts of Parliament was still hearing complaints of it. Vice-Chancellor Hall told a story of Lord Cottenham hearing a case under the old Trustee Act and failing to realize that an interpretation clause had declared that " land " should include " ship." The case, said the Vice-Chancellor, might have gone through without that point having been discovered. One wonders whether here the " indolence " should be ascribed to the draftsman or to the bench.

Brougham placed on record some " Golden Rules " for drafting. The first of these was " Always to use unequivocal and plain words." *Plain Words* is the title of the pleasant pamphlet lately issued by Sir Ernest Gowers as a guide to official language. One of his chapters contains " a digression on legal English." A parliamentary draftsman, explains Sir Ernest, must convey a precise meaning. It is his duty to—

> " try to imagine every possible combination of circumstances to which his words might apply and every conceivable misinterpretation that might be put on them and to take precautions accordingly. He must avoid all graces, not be afraid of repetitions or even of identifying them by *aforesaids,* he must limit by definition words with a penumbra dangerously large, and amplify with a string of near-synonyms words with a penumbra dangerously small; he must eschew all pronouns when their antecedents might possibly be open to dispute, and generally avoid every potential grammatical ambiguity . . . No one can expect pretty writing from anyone thus burdened."

Nor, we would add, must conciseness be expected. Bacon complains of the loquacity and verbosity of laws. Bentham, though his own style was open to criticism, constantly reprehended the faults of " over-bulkiness," " long-windedness " and " complicatedness." " Our verbose draftsmanship," wrote Brougham, " is merely a literary fault." Must draftsmen then study to be more " literary "? Was Macaulay, when writing laws for India, a better draftsman because he was a scholar and a man of letters? Our United Kingdom summary for 1946 reveals a minor instance of the possible clash between the literary and the workaday phrase. Having to find words for the prospective consequences of industrial injuries, the draftsman chose to specify " loss of personableness," only to have these words replaced in committee by the word " disfigurement " (see p. 8 below) which did not quite cover all that he meant to convey. The legislators who made the change perhaps forgot the third chapter of *Persuasion* where, after Sir Walter Elliot of Kellynch has generalized so harshly upon the ageing effect of naval service, Mrs. Clay rejoins that only the country gentleman can have the blessings of health and a good appearance to the utmost.

> " I know no other set of men but what lose something of their personableness when they cease to be quite young."

Macaulay, legislating in India, would have recalled this context, but Macaulay in India had not to contend with parliamentary committees.

Draftsmen will find their own points of interest in the summaries which follow on a later page. In England 1946 was another " White Paper " year. It was a year of accelerated law-making and of searching for swifter methods. The private member at Westminster has had little chance of initiating legislation for the past decade. Perhaps the standard is the higher in consequence. Mr. William Leitch has a justifiable grievance against a private member's amendment to a Northern Ireland Bill (p. 18). Yet it is a private member of the Indian Assembly to whom Mr. P. D. Deshmukh ascribes an important instalment of reform (p. 111). New Zealand drafting has always contained special features of technical interest; Westminster legislators should note once more the convenient device of a sessional Statutes Amendment Act to contain a miscellany of minor unrelated improvements of the law (pp. 98, 103). Northern Ireland has passed the equivalent of England's consolidating Perjury Act of 1911, and the Isle of Man has dealt with

larceny. Of the process of statute law revision, now being revived in the United Kingdom, India provides an example in her Repealing Ordinance (p. 117). Mr. A. J. Pienaar rejoices over another clearance effected by the Hospitals Ordinance of the Cape Province (p. 108). Nyasaland is re-writing its laws, last revised in 1933. Among many instances of similar effort elsewhere, Nova Scotia consolidates the law of marriage. England, which has a tedious sequence of some sixty statutes (not to mention Church Assembly Measures) on this subject, ought to follow so good an example.

To turn now from form to substance, Bentham's inventive mind (like that of Benjamin Franklin, his older contemporary) would have noted with interest that in 1946 Australia, Britain, Canada and New Zealand needed to legislate for the control of atomic energy. Franklin, probably even more than Bentham, would have appreciated those developments of Commonwealth Relations which show Canada legislating on Canadian citizenship, India, Burma, Ceylon and Malaya busying themselves with the re-fashioning of their constitutions, and Newfoundland setting up a National Convention to pave the way for a referendum on the future government of the country. International influences are at work. Autonomous Dominions prepare to carry out the decisions of a United Nations Organization; the Bretton Woods Agreement of 1944 is confirmed as far afield as the Kingdom of Tonga.

On the separate legislative fronts the sequelæ of the Second World War create common problems. The housing shortage leads to the invasion of empty camps by " squatters "; this popular requisitioning needs to be controlled as criminal trespass in Northern Ireland and in Tasmania. Rent restriction measures are reported from many lands. Besides other difficulties of reconstruction and resettlement there is much evidence of the obstinate survival of emergency regulations and their slow replacement by normal enactments of permanent duration. Not all the common problems, however, arise from the war. Englishmen might imagine, for example, that the " ribbon development " of house-building along main roads is an evil peculiar to their own densely populated country. Sir Lancelot Graham notes that the North West Frontier Province has to legislate for a like mischief. When he tells us also that, in the same territory, a provision applicable to the beating of tom-toms has been applied to electrically operated loudspeakers, we see the ubiquity of the dubious blessings of civilization. The Supreme Court at Washington has lately been examining a law for the control of this modern nuisance. Town planning is a topic of legislation in places as diverse as Gibraltar, Ceylon, Burma, Fiji and the West Indies. Something like the British law for protecting ancient monuments is enacted for historic sites and ethnological objects in Manitoba and unskilled excavation is regulated in Somaliland. The restrictions on unofficial uniforms and public processions, reported from Manitoba, recall Britain's Public Order Act of 1936. Mental treatment measures in the Bahamas (p. 159) seem to echo the English statute of 1930. It was a Benthamite ideal that " each legislator may add to his own wisdom the wisdom of his neighbours and contemporaries." British " law reform " enactments of 1935 and 1945 as to joint tort-feasors and contributory negligence reappear in Fiji. The British re-statement of the law of marine insurance in 1906, one of three classic codifications framed by Sir Mackenzie Chalmers (a founder of our Society), gains fresh recognition in Ontario. The exemplary labours of the Conference of Commissioners on Uniformity of Legislation continue to bear fruit in Canada. Legislation by Canadian provinces is based on the Commissioners' model Bills in connection with the limitation of actions (p. 34), defamation (p. 33), photographic evidence (p. 36), warehouse receipts (p. 33), and, most frequent of all (pp.34, 38, 40 and 45), the abrogation of the House of Lords decision in *Russell* v. *Russell* [1924] A.C. 687, which restricted testimony about marital relations. This last-named provision is adopted also in New Zealand.

It must not be expected that legislative movements will always be in the same direction or at the same pace. Corporal punishment is brought back in Trinidad and Tobago, but is abolished for the King's African Rifles in East Africa. Census arrangements go forward in several countries; Australia cuts down the questions which may be asked about sickness, infirmity and education. The changes in the censorship of publications in Eire (p. 22) deserve attention. The truism that law-making must take account of customs and traditions is nowhere more conspicuous than in the laws for the recognition of women's rights. Quebec now opens the profession of dentistry to women; India lightens the lot of Hindu wives, but in the education law of Sind it appears that a "child" still means a male child only.

Among legislative novelties or near-novelties our readers will notice British Columbia's provision (p. 32) for married women to change their name on divorce or annulment of marriage. New Zealand's Geographic Board may supervise place-names, allotting new ones or altering old ones which are unsatisfactory. Quebec sets up a Provincial Publicity Bureau equipped with film libraries as part of its machinery for official publicity and for the information of visitors. Nova Scotia allows official reporters to be appointed to the courts of magistrates and coroners. In Western Australia daylight saving has a new local application, being limited to an area within 35 miles of the General Post Office at Perth.

Legislators cannot ignore the lighter side of life. They provide for trotting races in Victoria, "harness racing" in Nova Scotia, dog races in Northern Ireland, and totalisators at race meetings in the Orange Free State and in Fiji. Lotteries are tolerated for public causes in Mauritius, while Quebec refuses to allow rights of property in gaming apparatus. Nor can legislators ignore their own concerns. In Britain, in India and in New South Wales they provide for their own remuneration. In Britain members of the House of Commons are still entrapped by the Act of Anne which disqualifies those who hold an office of profit under the Crown. Queensland arranges for the recovery of fines from members adjudged guilty of contempt.

As usual, the forces and phenomena of nature insist upon attention. There are provisions for oil seeds in India, sugar cane in Trinidad, sisal in Tanganyika, passion fruit in Kenya, nutmegs in Grenada and copra in Nyasaland. Dangers are faced in provisions about soil conservation in New Zealand, flood and water pollution prevention in Ontario, petroleum and natural gas in British Columbia, cyclone and drought insurance in Mauritius and banana insurance in Tasmania. Then there are the pests—noxious weeds in Alberta, nassella tussock in New Zealand, warble fly in New Brunswick (where fly-free areas can be established on the petition of at least 75 per cent. of the local cattlemen), fruit fly in Western Australia (where foliage baiting can be compulsory), fungus diseases in Saskatchewan, timber wolves and their pups in Manitoba, wild dogs in South Australia (not to mention stray dogs in Bombay) and vermin—in the wide sense which Mr. Pienaar is careful to explain—in the Cape Province. The control of human diseases accounts for such laws as those for tuberculosis in Quebec or for yellow fever and other afflictions elsewhere. Eugenic standards are strengthened by insistence upon medical examination before marriage in Alberta, Manitoba and Prince Edward's Island; there must be a doctor's certificate that the applicant for a marriage licence has undergone a blood test for venereal infection. Several legislatures encourage the profession of nursing. There is law-making also about alien doctors, physiotherapists and veterinary surgeons. In Western Australia the Public Health Commissioner may arrange for sending bodies to approved schools of anatomy outside the State. Objectionable drug advertisements are prohibited in Bihar and in Orissa; the advertisement of contraceptives is banned as an indecent publication in New South Wales.

If an author's space and his readers' patience permitted, one could continue to pick out intriguing samples from our summaries of the laws of 1946—entries

about opium dens in Mauritius, beggars in Bombay, boy scouts in Nyasaland, aboriginals in Queensland, " State children " in Western Australia, war refugees in Tanganyika or illegal immigrants in Cyprus. We have still not touched on the important developments in social security or in labour conditions. The entries range from workers' holidays in the States of Australia, bush workers, shop assistants and seamen in New Zealand, bakers in Victoria and mica miners in India to trade union arrangements in the Gilbert and Ellice Islands, workers' meetings in Bombay mill compounds and the controversial revocation of the Trade Disputes and Trade Unions Act of 1927 in Britain. But space and patience forbid; our readers must be left to make their own selections.

Mr. Woinarski's lively comments on the laws of Victoria in 1946 (p. 79) hint that legislators may easily exaggerate the value of their work. Dr. Johnson might have agreed with him.

> How small, of all that human hearts endure,
> That part which laws or kings can cause or cure.

The British statutes of the year exhibit the optimism of a new political philosophy. Until the Labour Party came to power in 1945, a perusal of the laws annually enacted at Westminster would seldom have informed the reader whether Whigs or Tories, Liberals or Conservatives, were in office. In 1946 the indications are unmistakable. Projects of nationalization are among those laws which are to cure the ills which human hearts endure. Some critics affect to discover in recent British statutes a tendency towards propaganda and rhetoric. A political manifesto, they say, is embodied in a " stream-lined " Act of Parliament before anybody has considered how the particular objects are to be attained; " the blue-prints are not ready "; difficulties are not foreseen; their solution is postponed by relegating matters of major as well as minor importance to that subordinate legislation which in Britain we have known familiarly as " statutory rules and orders " and must henceforth (see p. 14) re-name " statutory instruments." The criticism is not without foundation, though it must be recognized that political programmes dictate legislative tasks which can hardly be discharged by direct legislation. To take an instance at random, the de-casualization of dock labourers is an admirable project but a difficult one to translate into statute law. The Dock Workers (Regulation of Employment) Act was passed on February 14, 1946. It began by enacting that a " scheme " may provide for securing greater regularity of employment for dock workers and for ensuring their availability in numbers adequate to the efficient performance of their work. The next sub-section outlines the scope of the scheme in general terms; then another subsection imposes penalties for breach of its requirements. Otherwise the Act is concerned mainly with machinery; it mentions the bodies (representative of employers and employed) which may prepare a scheme, the Minister's functions, the publication of his draft order, its final confirmation, and so on. Nothing more happens till June, 1947, when the Minister puts forward his own scheme, the representative bodies having produced none. The scheme establishes a National Dock Labour Board and local dock labour boards. Dock workers and dock employers are to be registered. Nobody but a registered employer is to engage a worker; the registered employer is not to employ a daily worker other than the one sent to him by the local board. If the employer fails to carry out the scheme, he is struck off the register and put out of business. The dock worker's part is to report at such times as required, accept any employment for which the local board considers him suitable, go to any other port or place within daily travelling distance, " carry out his duties in accordance with the rules of the port . . . and work for such periods as are reasonable in his particular case." The law-giver has done his best; what more could he do? Time and experience will show how far he has succeeded.

As for the rhetorical element in legislation no source of inspiration or enthusiasm

must be left untapped if the citizen is to be encouraged or cajoled into compliance with the law. One of our contributors detects a note of grandiloquence in the recent ordinances of Bengal (p. 125). Bacon declined to approve " a too concise and affected brevity as being the style of majesty and command." Perhaps to-day, when government departments shout their slogans from the advertisement hoardings—" do this " or " don't do that "—the law itself must contain its appeal to sentiment and imagination and the draftsmen must not despise the persuasiveness of the orator. Alberta (p. 29) has enacted a " Bill of Rights." A policy of adequately paid work for everyone (with the alternative of adequate maintenance from the State), free education, all-in social benefits and health services, and a pension at sixty—these proposals glow with added attractiveness if embodied in a statute which receives so magical a name. Folk-memories are re-awakened. The promises of 1946 are linked to the assurances of 1689. Our English Bill of Rights has indeed had a triumphal progress across the ocean. Its name and its contents, as Bryce somewhere observes, were in the thoughts of those who framed the first constitutions of Massachusetts and Virginia when the North American colonies renounced their allegiance to the British Crown. Much of the document of 1689 passed thence into the Federal Constitution of the United States in 1787 or was added in the first ten amendments a few years later. Its spiritual message was handed on to the republics of Spanish America and influenced the forms of government which France adopted in 1790 and after. If all the claimants of the Natural Rights of Man have not laid equal stress upon his corresponding duties, it is for their rights that men and women have learnt to look to the law-courts and the law-givers. There is other testimony in the legislation of 1946 to the reverence for ancient landmarks. The Lacock Abbey copy of Magna Carta is lent by Britain (p. 2) for exhibition in a land where the name of the Great Charter is a symbol of liberty and bears meanings which no baron at Runnymede could have foreseen. Thousands who have never read its many miscellaneous articles nor studied the curious history of its 17th-century resurrection will gaze at the scarcely decipherable page and be fortified in their instinctive respect for the rights of man and for due process of law.

When the Lord Chancellor opened the University of London Institute of Advanced Legal Studies last June, he expressed his belief that the respect paid to law and order by the British was our greatest guarantee for passing successfully through difficult times. He added a warning to legislators; they might bear in mind the danger of undermining that respect when they piled one law upon another. It is a timely admonition in a stream-lined era.

# BRITISH EMPIRE

## I. BRITISH ISLES

### 1. UNITED KINGDOM

[*Contributed by* Sir Cecil Carr, K.C.B., K.C.]

During 1946 the Royal Assent was given to 66 public general statutes of the Parliament at Westminster. Four of these belonged to the second session which began on November 12.* Standing Committees of the Commons House examined many Bills upstairs, but the pace at which the legislative machine was operated allowed less time than careful drafting and adequate discussion have demanded. An increasing recourse to departmental law-making was facilitated by the seemingly indefinite prolongation of emergency powers. New arrangements affecting the publication and the parliamentary control of delegated legislation are somewhat fully described in the analysis of the Statutory Instruments Act of 1946 at the end of this Summary.

**Form of the Law.**—One consolidating measure, the Education (Scotland) Act, neatly reproduced some 23 previous statutes dating back to 1872 (c. 72); an amending Act of 1945 had prepared the way. The Water (Scotland) Act, too, was in part consolidation.

Scottish application clauses, tagged on to statutes otherwise framed exclusively for English conditions, are often formidable in bulk and *per se* empty of meaning as well as being an affront to Scottish nationalism. The awkwardness of one example (s. 25 of the New Towns Act, 1946) was mercifully mitigated for Scottish legislators by the official preparation of a print of the Bill, when it came to the Lords from the Commons House, showing the proposed law as it would look when all the Scottish adaptations had been carried out. In one short statute [1] there is an " expository schedule "; not only is the previous enactment directly amended, but the text of it is set out as it will henceforth stand when amended.

**The British Constitution.**—Once again members of the House of Commons have to be rehabilitated after inadvertent collision with the Act of Anne which has disqualified them because they have held an " office of profit " under the Crown. Mrs. Corbet, M.P., and Mr. S. S. Awbery, M.P., had been assessors to the umpire who considers appeals on the postponement of liability to serve in the Forces; Mr. James Harrison, M.P., had been a member of a pensions appeal tribunal. Their " profit " was negligible. Mr. Harrison had been called upon to adjudicate once only in 1944 and twice in 1945; for each attendance he received 30s. but lost more than that sum in wages. Mr. Awbery had resigned office before the declaration of the poll at the 1945 General Election but had received no reply till three weeks later; nevertheless he was considered to have disqualified himself from sitting and voting in Parliament and to have exposed himself to penalties. Such are the inconvenient consequences of failure to re-state the law in simple language, as a Select Committee of the House of Commons so definitely recommended in 1941. An Act of Indemnity is passed to validate these three elections and to avert the fines (c. 43).

**Machinery of Government.**—A Ministers of the Crown (Transfer of Functions) Act tidies up the activities of temporary departments created under emergency legislation (c. 31). It enables their functions to be re-distributed, and their styles and titles changed, by Order in Council instead of by full-dress statute. The Orders in Council do not operate till copies have been laid before Parliament; for 40 days after laying they are exposed to the risk of a prayer in either House

* The chapter numbers of the statutes of this second session are distinguished by an asterisk where they occur in this Summary.

[1] 9 & 10 Geo. 6, c. 66, s. 1 (1), sch. 2. For this device, sometimes called the Keeling Schedule, see *Journal*, February, 1940, p. 14.

for their annulment; if an Order dissolves a department, it must be laid in draft and it requires an affirmative resolution.

At the end of 1946 the Ministry of Defence Act (c. 2*) authorized the appointment of a Minister

> " who shall be in charge of the formulation and application of a unified policy relating to the armed forces of the Crown as a whole and their requirements."

This arrangement had been foreshadowed in the White Paper (Cmd. 6923) on the Central Organization of Defence. The Act contains the usual provisions for the Minister's oath of office, his officials, his capacity to sit in the House of Commons, his status as a corporation sole, and the authentication of his documents.

During 1946 the House of Commons increased its members' salaries or allowances up to £1,000 a year. This was done by mere resolution, after discussion of the recommendations of a Select Committee. A statute (the Ministerial Salaries Act) was required for raising the salary of the Postmaster-General to £5,000, that of the Minister of Pensions to £3,000 and that of the Assistant Postmaster-General to £1,500 (c. 55). The Chancellor of the Duchy of Lancaster, hitherto not paid out of public funds, is to have £3,000; any deficit will now come on the Votes, so that for the first time his salary may be challengeable in the House. The Act, which is retrospective, also deals with the salaries of certain officers of the Household.

**International and Commonwealth Affairs.**—Under Article 41 of the United Nations Charter signed at San Francisco in June, 1945 (the Article relating to measures not involving the use of armed force) the Security Council can call upon Britain to apply any measures to give effect to a decision of the Council. The United Nations Act (c. 45) authorizes His Majesty to make by Order in Council such provision as appears to him necessary or expedient for the effective application of those measures, including provision for apprehending, trying and punishing persons who offend against the Order. The first General Assembly of the United Nations had approved a convention on privileges and immunities and had resolved that the International Court of Justice, among other international organizations, should benefit. Accordingly the Diplomatic Privileges (Extension) Act enlarges the existing statutory immunities under the Act of 1944 to cover, amongst other persons, the judges and registrars of that Court, the litigants who attend it, and their legal advisers (c. 66).

Two statutes attest the ties between the United States and the United Kingdom. The British Museum under its Act of 1924 can lend exhibits to galleries, museums or exhibitions in Britain but not abroad. A new Act (c. 56) allows it to lend the Lacock Abbey copy of Magna Carta (generously given to the British nation by Miss Talbot) for public exhibition in the Library of Congress at Washington for two years. Of the Museum's three copies two (under the terms of the Cotton gift) must be kept in England. The Lincoln Cathedral copy, one of the four surviving examples of the original issue, had been lent for display at the British Pavilion in the New York World's Fair and duly returned. The Lacock Abbey copy is one of the final re-issue by Henry III in 1225. In passing the Act, both Houses dallied academically with the choice between the two spellings " Carta " and " Charta."

The second statute of Anglo-American interest was that which facilitated the erection of a statue of Franklin Delano Roosevelt in Grosvenor Square, hard by the American Embassy (c. 83). As private rights in the square were to disappear when it became a public garden, the Bill encountered the procedure which governs a hybrid Bill; the fact that it was promoted by the Government as a public Bill, and not by the Pilgrims Society as a private Bill, enabled the Prime Minister and Mr. Churchill to make appropriate speeches on Second Reading.

A British North America Act, passed at the recited request of Canada,

arranges for readjusting the representation in the Canadian House of Commons on the basis of the decennial census of the population of Canada (c. 63). The fathers of Confederation had taken the population of the Province of Quebec (with the fixed quota of 65 members to represent that population as decennially ascertained) as the unit determining the representation of provincial populations elsewhere.

Developments in the East account for four Acts of 1946. The India (Proclamations of Emergency) Act is the first of them. The Government of India Act, 1935, had enumerated the matters about which the Federal and Provincial Legislatures can pass laws. S. 102 of the 1935 Act allowed the Federal Legislature, if the Governor-General proclaimed the existence of a grave emergency threatening the security of India, to make laws for defence on any subject named in the Provincial Legislative List. The Defence of India Act, passed by the Federal Legislature on the outbreak of war, authorized the making of Defence of India Rules. One of these rules allowed the requisitioning of property movable or irremovable. The rule was challenged by litigants on the ground that the requisitioning of movable property was not mentioned in either the Federal or the Provincial List. The Madras and Calcutta High Courts rejected the argument; the Bombay High Court accepted it. The Parliament at Westminster therefore removes doubts by giving the Federal Legislature the emergency power to make laws about matters enumerated or not enumerated in the Provincial List (c. 23). A complicated provision saves the position of a successful litigant who will now have no chance to uphold his judgment on appeal. The India (Central Government and Legislature) Act gives the Indian Legislature temporary powers to legislate for specified aspects of trade and commerce and of unemployment, and protects the duration of laws passed by virtue of a proclamation of emergency (c. 39). It also alters the qualifications for membership of the Governor-General's Executive Council, enlarging his choice by repealing the 1935 stipulations that three members must have been ten years in the service of the Crown in India and that one member must be a barrister, advocate or pleader. Another new statute alters the franchise qualification in Burma where men and women will now have the vote at 21 years of age (c. 57). This enables electoral rolls to be prepared and thus expedites the holding of elections and the constitution of ministerial government. The Straits Settlements (Repeal) Act gives effect to proposals in White Papers (Cmd. 6724 and 6749) of 1945. The Settlements (Singapore, the Cocos and Christmas Islands, Penang, Malacca, Labuan and their dependencies) cease to be a single colony and are to be divided into such territories as is directed by Order in Council (c. 37).

**Emergency Powers.**—Last year's Summary explained that the Emergency Powers (Defence) Act, hurriedly passed ten days before war broke out in 1939, had to be continued annually by a resolution of both Houses of Parliament. Mr. Churchill, in the grimmest years of the struggle, was thus obliged to justify to the legislature the prolongation of the exceptional powers which had been granted to the Executive for the winning of the war. The 1939 Act, the parent of Defence Regulations and the grandparent of thousands of departmental orders, expired on February 23, 1946, after a final continuance of six months under an Act of 1945. Meanwhile, at the end of 1945, the Supplies and Services (Transitional Powers) Act had extended the emergency powers for as long as five years ahead without any requirement of annual renewal. The extension was accompanied by some modification of the scope of the regulation-making authority; the purposes of reconstruction and resettlement were substituted for those of the defence of the realm and the conduct of the war. Not all the Defence Regulations were thus continued; some would lapse in February, 1946, when the parent Act expired.

In January, 1946, the Emergency Laws (Transitional Provisions) Act continues various specific Defence Regulations till the end of 1947. This Act (c. 26) was, the Lord Chancellor observed, a form of legislation which he did not like

and could not commend; he sincerely hoped that it would be unnecessary to renew any of the regulations after 1947.[2] Those which were thus prolonged dealt with subjects as diverse as false fire alarms, venereal disease, the opening of cinemas and the payment of roadmen by cheque. The new Act also terminated some, and extended and amended others, of the war-time statutes, and made some of these temporary enactments permanent.

**Nationalization.**—Public ownership being a plank in the Labour Party's platform, the Government proceeded with three instalments of a policy of nationalization. In varying degrees they invited the constitutional question of the responsibility to Parliament of the managers of nationalized concerns, and they invoked controversy over the compensation to dispossessed private owners.

*Bank of England.*—The Bank of England Act (c. 27) transfers all the existing capital stock of the Bank to a Treasury nominee (the Treasury Solicitor, who is by statute a corporation sole); the existing stockholders receive 3 per cent. Government stock in exchange, redeemable at par on three months' notice on or at any time after April 5, 1946. No more dividends will be declared on bank stock; instead the Bank will pay the Treasury £1,746,360 yearly (" or such less or greater sum as may from time to time be agreed upon "), that being the amount paid for the last 23 years. On the " appointed day " the Governor, Deputy Governor and directors vacate their office and are replaced by Crown nominees serving for five years and retiring in rotation; the old number of 24 directors is reduced to 16. The published " Declaration of Labour Policy " had announced not only that the Bank of England should be brought under public ownership but also that the operation of the other banks should be harmonized with public needs. S. 4 of the Act not only authorizes the Treasury to give directions to the Bank as thought necessary in the public interest, but also allows the Bank to " request information from, and make recommendations to, bankers " and, if authorized by the Treasury, to issue directions to a banker to secure that effect be given to requests and recommendations. There is, however, a proviso to protect a particular customer's affairs from disclosure and to allow bankers to make representations before directions are issued.

*Coal.*—The Coal Industry Nationalization Act (c. 59) is a longer and more complicated measure. It establishes a National Coal Board with a monopoly of getting and working coal and with the duty of securing the efficient development of the industry and of

> " making supplies of coal available, of such qualities and sizes, and in such quantities and at such prices, as may seem to them best calculated to further the public interest in all respects, including the avoidance of any undue or unreasonable preference or advantage."

The board are given wide powers such as would be found in the memorandum of association of a company. Their policy is to be directed to secure the safety, health and welfare of their employees, " the benefit of the practical knowledge and experience of such persons in the organization and conduct of the operations in which they are employed," and the balancing of revenues against outgoings " on an average of good and bad years." The Minister of Fuel and Power appoints the board and gives them " directions of a general character." There is to be an Industrial and a Domestic Coal Consumers' Council.

For the purpose of transfer to public ownership the assets are grouped in three classes. First come the coal, the mines, the coke ovens and colliery plants of various kinds; this class vests in the board without more ado. Next come assets like colliery stores, waterworks, coal wharves and housing property; these will be transferred at the option of the board or the owners. The third class is to be transferred at the option of board or owners subject to arbitration in case of objection; this class includes such assets as brickworks, central rescue stations and non-colliery railways.

[2] See, however, their almost automatic continuance by a similar statute, 11 & 12 Geo. 6, c. 10 (in December, 1947), for various further periods.

For the purpose of fixing the compensation there are to be a Central Valuation Board, district valuation boards and referees. There will be a global sum determined by a tribunal working according to the agreed terms published in a White Paper (Cmd. 6716). The Central Valuation Board will divide this sum among the valuation districts, and the districts will divide it among the separate undertakings in the district. Compensation may be awarded also for any increase in overhead expenses which is due to severance, and cash payments may refund capital outlay made since July, 1945. One feature of the compensation arrangements is that, whereas individuals may get Government stock and be free to cash it, there are restrictions on companies' disposal of stock. Among provisions consequential on nationalization the Coal Advisory Committee (constituted in 1920) is abolished, the coal-selling schemes under the 1930 Act are wound up, the Miners' Welfare Commission is modified, and the Minister is directed to prosecute safety and health research. He may also advance to the board for capital equipment sums up to £150 millions.

*Telecommunications.*—The Cable and Wireless Act (c. 82) transfers into public ownership the share capital of the company of that name, a company owning the greater part of the world's system of cables besides many wireless stations, a company in which the Treasury already held a large stake. Partner governments within the British Commonwealth asked, in various tones of insistence, for a single organization, and the policy of the Act was that which the Reith Conference of 1945 had unanimously recommended. The existing organization was shown in a White Paper (Cmd. 6805). The compensation is payable in Government stock, the amount being settled by agreement or arbitration.

**Civil Aviation.**—Nationalization was an element also in the Civil Aviation Act (c. 70) which, " with a view to providing civil air services in various parts of the world," created two new corporations, British European Airways and British South American Airways, to work alongside the British Overseas Airways Corporation established by statute in August, 1939. The functions of the three bodies are declared. The Minister of Civil Aviation may by order (laid before Parliament and subject to annulment) define their powers so that the public shall understand " the general nature and scope " of their activities; after consultation with any of the three, he may give it " directions of a general character " as to the exercise of its functions in the national interest. This carries out the policy stated in a White Paper (Cmd. 6712). The corporations may borrow within stated limits, issuing stock which the Treasury may guarantee. Exchequer grants may be made to them. They will submit annual accounts and reports to the Minister which he will lay before Parliament. The three corporations are given a monopoly of passenger and goods air services " for hire or reward upon any scheduled journey," which means a journey in a service systematically operated for the public. There are exceptions for instructional flights, air ambulances or rescue services, and approved charterings. There is to be an Air Transport Advisory Council. The Minister, who receives powers of acquiring and controlling land, can prohibit or restrict the use of civil aerodromes. The miscellaneous provisions cover the recording and registration of births and deaths occurring in aircraft, the appointment of special constables, and the custody and disposal of lost property.

**Finance.**—The miscellaneous contents of the Finance Act (c. 64) include the reduction of entertainments tax on cricket and football matches (" any game or sport other than the racing or trial of speed of animals, vehicles, motor vessels or aircraft "), relief from purchase tax for articles as diversified as kitchen dressers, electric kettles, typewriters, wigs and vermin traps, the first instalment of repaying the post-war credits of men of 65 and over, the termination of excess profits tax, new scales of death duties (no estate duty is payable unless the estate exceeds £2,000), and the establishment of a National Land Fund with a grant of £50 millions in connection with the acceptance of property in satisfaction of death duties.

The Borrowing (Control and Guarantees) Act replaces the war-time powers under Regulation 6 (Control of Capital Issues) of the Defence (Finance) Regulations; it enables the Treasury to make orders for divers purposes to canalize the demand for capital in the hungry years of reconstruction (c. 58). If s. 1, arranging for Treasury control of borrowing, was claimed to be a defence against inflation, s. 2, enabling the Treasury to guarantee loans, was claimed to be a defence against deflation. While the proposals were under discussion in the Bill stage, a memorandum of policy was circulated (Cmd. 6726); the Capital Issues Committee was to be continued and a National Investment Council set up. The document included a draft Treasury order, thus inviting the comment that the contents of the draft order might well have been embodied in the Bill.

Normally the Government's additional borrowing powers by National Loans Act have been asked for annually after the Budget. In 1946 they precede it. The Miscellaneous Financial Provisions Act (c. 40) authorizes borrowing up to £250 millions. It also changes the source from which the war damage payments are to be made, putting the charge (as a matter of capital expenditure) upon the Consolidated Fund. The Civil Contingencies Fund, a convenient facility for departments to spend in advance of parliamentary sanction on a service not covered by Estimate, is raised substantially to £250 millions. The salary of the Comptroller and Auditor-General is raised to put him on a level with the heads of offices in Whitehall.

There are two Public Works Loans Acts. One (c. 41), instead of appointing a fresh batch of Public Works Loan Commissioners by name (as has hitherto been done every five years), directs that the Commissioners shall in future be appointed by the Crown for a four-year term, retiring in rotation. The other (c. 75) removes some earlier statutory provisions as to minimum rate of interest on housing loans, in sympathy with the Government's cheap money policy. Both these Acts authorize grants for public works (" local loans ") up to substantial totals. A Post Office and Telegraph (Money) Act of familiar pattern authorizes a grant up to £50 millions for postal, telegraphic and telephonic development (c. 51).

**Coinage.**—Britain has to economize in silver, having to repay to the United States 88 million ounces lent during the war. Accordingly the Coinage Act (c. 74) removes from the currency the element of silver (with special provision for the King's Maundy Money) and instead makes coins of cupro-nickel alloy legal tender for payment of an amount not exceeding forty shillings. Enactments relating to silver coin are adapted. The Board of Trade is to make and verify standard trial plates for determining the justness of the coins issued by the Mint.

**Employers and Employed.**—Perhaps the most controversial statute of 1946 was the Trade Disputes and Trade Unions Act (c. 52), enacted in the briefest form " to repeal the Trade Disputes and Trade Unions Act, 1927, and to restore all enactments and rules of law thereby affected." Its supporters advocated the repealing statute as the overdue termination of a vindictive measure passed in panic after the General Strike of 1926; its enemies called it an Act for bigger and better strikes. The 1927 Act, it may be recalled, had defined an illegal strike and had protected persons who refused to take part in an illegal strike. It had prohibited intimidation; it had substituted " contracting in " for " contracting out " in the matter of the trade unionist's contribution to a levy for political purposes. It had dealt with the position of civil servants, and it had enabled the Attorney-General to apply to the courts for an injunction to prevent trade union funds being applied for the purpose of an illegal strike.

Decasualization of the work of dockers is not an easy topic of legislation. As might be expected, Parliament hands it over to a Minister to deal with by scheme and order at his leisure. The Dock Workers (Registration and Employment) Act (c. 22) accordingly begins—

" Provision may be made by scheme under this Act for ensuring greater

regularity of employment for dock workers and for securing that an adequate number of dock workers is available for the efficient performance of their work."

The scheme may specify the workers and employers to whom it is to apply, may prescribe their obligations, may prohibit or restrict work outside the scheme and may regulate recruitment of dock workers and their allocation to employers. Voluntary schemes had been operating since that of Liverpool was initiated in 1912; by 1936 there were similar arrangements in 35 ports. None of these had guaranteed the docker a regular minimum wage when full work was not available for him. The new Act provides that the Minister's scheme may secure that, " in respect of periods during which employment or full employment is not available," the workers to whom it applies, if available for work, " will, subject to the conditions of the scheme, receive not less than such pay as may be thereby provided." The scheme may also provide for workers' training and welfare, for setting up a body to be responsible for its administration, and for the method of defraying its cost. Bodies representing employers and employed may prepare a scheme; if they do not, the Minister may do it. His order, embodying the scheme, must be laid before Parliament, and will be subject to annulment if either House so resolves within 40 days.

**Service in H.M. Forces.**—The White Paper of 1945 on the Post-War Pay Code (Cmd. 6715) suggested that the period for qualification for pension should be uniformly 22 years for all three branches of the Forces. It was already 22 years for the Royal Navy. The Royal Marines Act (c. 4*) brings the Marines into line, and the Army and Air Force (Annual) Act (c. 47) does the same for soldiers and airmen.

The Public Notaries (War Service of Articled Clerks) Act allows the clerks to count their war service as service under articles (c. 79). Under the National Service (Release of Conscientious Objectors) Act the conscientious objectors who were conditionally registered under the National Service Acts find their way into the same position as men and women serving in the Army—i.e., they become subject to the " age and service " principle (c. 38). But for this statutory concession they would remain under compulsion until the end of the emergency is at last declared.

**The Civil Service, &c.**—A new Superannuation Act (c. 60) casts a fresh deposit upon the nine layers of previous statutes, the earliest of which is dated 1834. Technical difficulties, not to mention also the suspected reluctance of experts to surrender the advantage conferred by painfully acquired knowledge of the existing labyrinth, continue to defeat the hope of consolidation.

Civil servants' pensions ordinarily depend on length of recognized service; 40 years' service means a pension of forty-eightieths of the salary finally attained. The new Act concedes to ex-Service men recruited to the Civil Service the right to count their time with the Forces (from the outbreak of war in 1939 to a date to be appointed by the Treasury) as if it were continuous service in an unestablished capacity. Acts of 1859 and 1884 allowed " added years " to late entrants possessing professional or other special qualifications. This system of added years, attractive to men possessing the legal or other experience needed in public departments, was abolished in 1914 but now reappears. A limited advantage is given in future to those who enter at 40 (or, exceptionally, between 35 and 40), their service being reckoned as eight-fifths of its actual length. Thus anyone coming in at 40 and completing 25 years' service might be in the same position as one who enters at 25 and completes 40. Civil servants who went to other recognized forms of work of national importance in the war may aggregate the two periods for pension. External superannuation schemes such as the federated university system or the scheme for nurses and hospital officers, etc., are now interlocked with Civil Service superannuation. If teachers are afterwards employed as civil servants, they can carry forward their superannuation rights.

Clerks of Assize have hitherto had salaries but no proper pension rights; their office has been in the gift of the judge who is travelling the Assize when a vacancy occurs. A Supreme Court of Justice (Circuit Officers) Act gives them an improved salary and pension rights similar to those of King's Bench masters (c. 78). The power of appointment will henceforth belong to the Lord Chief Justice and the appointee must be a barrister or solicitor of not less than five years' standing. Certain subordinate circuit offices are abolished and the duties become part of the business of the Central Office of the Supreme Court. Circuit officers are not exactly civil servants, but the conditions of their appointment and whole-time service now approximate more closely to those which govern other public servants.

**State Insurance and Health Services.**—The Beveridge plan of 1942 and the Coalition Government's White Paper of 1944 (Cmd. 6729) had prepared the way for a great new project of " all-in " State insurance, a legislative cherry big enough to need three legislative bites. First comes the National Insurance (Industrial Injuries) Act, repealing and substantially replacing more than a dozen Workmen's Compensation Acts (c.62). A much litigated formula remains for fear of wasting the forensic effort and the money devoted to its elucidation; it is still insurance " against personal injury caused . . . by accident arising out of and in the course of " the employment, though, under s. 7(4), an accident arising " in the course of " the employment will be deemed, in the absence of evidence to the contrary, " also to have arisen out of " the employment. The benefit to the insured person may be " injury benefit " (for incapacity for work), " disablement benefit " (for " loss of physical or mental faculty ") or " death benefit." " Loss of physical faculty " is to be construed as including " disfigurement " (the draftsman's original words were " loss of personableness ") " whether or not accompanied by any loss of faculty." Three sections deal particularly with accidents happening while the insured person is acting in breach of statutory or other regulations or of the employer's orders, or while travelling in the employer's vehicle (which includes a ship, vessel or aircraft) or while taking steps " on an actual or supposed emergency " to rescue, succour or protect persons " who are or are thought to be or possibly to be injured or imperilled," or to avert or minimize serious damage to property. There is provision even for accidents in the course of illegal employment. The amount of injury benefit—45s. for a single man, 16s. more where there is a wife, and another 7s. 6d. for the eldest child (other children being taken care of by the Family Allowances Act)—can be increased. Disablement pensions may be increased for unemployability or for special hardship or where constant attendance or approved hospital treatment is required. Medical questions will be determined by a medical board of not less than two doctors, with an appeal to a medical appeal tribunal consisting of a chairman and two doctors. Insurance officers will decide whether the accident is within the Act; there is an appeal from his decision to local appeal tribunals (representative of employers and employed, with a chairman appointed by the Minister), and thence to the Industrial Injuries Commissioner, a barrister of at least ten years' standing. The Act contains the old provisions for industrial diseases; it deals with finance by means of an Industrial Injuries Fund, and sets up an Industrial Injuries Advisory Council. Miscellaneous clauses arrange for research, vocational training, industrial rehabilitation and the supply (free or at a reduced charge) of artificial limbs and similar appliances. Workmen's compensation, of course, has been entangled with the problem of alternative remedies; on this matter Parliament was content to await the report of the Monckton Committee.

The second instalment is the National Insurance Act (c. 67) which gathers together, condenses and improves upon the existing enactments which originated with the Asquith old age pensions of 1908, the Lloyd George health and unemployment insurance of 1911 and the Chamberlain contributory pensions of 1925. There are to be three classes of insured persons—" employed " (gainfully

employed under a contract of service), " self-employed " (gainfully employed but not " employed " in the sense already mentioned), and " non-employed." The former special arrangements for agriculture and the banking and insurance industries come to an end; so do the old exemptions for the Civil Service. The contributory element survives but the services of the Friendly Societies are no longer relied upon. The finance is based on two new funds, a National Insurance Fund and a National Insurance (Reserve) Fund. The former will receive all contributions paid henceforth by employers, insured persons and the Exchequer, and will pay out all claims for benefit; the latter Fund absorbs all the assets of the previous schemes of pensions and State insurance. The benefits are of seven kinds—unemployment and sickness benefits, maternity benefit (including maternity grant, attendance allowance and maternity allowance), widow's benefit (including widow's allowance, widowed mother's allowance and widow's pension), guardian's allowance, retirement allowance and death grant (to cover funeral expenses). There will be a National Insurance Advisory Committee and local advisory committees. Claims for benefit will be determined in the first instance by officers appointed by the Minister of National Insurance; they may refer them to local tribunals, whence there will be an appeal to the National Insurance Commissioner, a barrister of at least ten years' standing. Questions of law go to the High Court. In this Act, which otherwise might have been twice as long, Parliament shows remarkable generosity in leaving matters to be dealt with by departmental regulations.

The third instalment is the National Health Service Act (c. 81). Like other recent statutes, it opens with a general statement of policy. It shall be the duty of the Minister of Health—

> " to promote the establishment in England and Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of England and Wales and the prevention, diagnosis and treatment of illness, and for that purpose to provide or secure the effective provision of services in accordance with the following provisions of this Act."

A Central Health Services Council and Standing Advisory Committees are set up and their duties are declared. The Minister is to provide, to the extent of " all reasonable requirements," hospital accommodation, medical, nursing and other services required at hospitals, and specialists' services at hospitals, at health centres, at clinics " or, if necessary on medical grounds, at the home of the patient." Hospital accommodation may be made available on part payment and for private patients. The Minister takes over the voluntary and the local authorities' hospitals. The endowments of voluntary hospitals which are designated " teaching hospitals " are transferred to Boards of Governors; those of other voluntary hospitals are pooled in a Hospital Endowments Fund. Regional Hospital Boards are constituted (for areas which will be designated by order) to administer hospital and specialist services; they will appoint Hospital Management Committees. There are to be ancillary services for research and for bacteriological work, blood transfusion and other supplies required in emergency.

The councils of counties and county boroughs are to set up health centres for general medical, general dental, pharmaceutical and specialist services and health publicity and information. They are to arrange for the care of mothers and children, for midwifery, home nursing, vaccination and immunization, ambulances, preventive medicine, after-care and domestic help. Every local health authority will have an executive council who will arrange (in consultation with local medical, local pharmaceutical and local dental committees representing the practitioners concerned in the area) " personal medical services for all persons in the area who wish to take advantage of the arrangements." Under the Minister's regulations the executive councils will make lists of the practitioners who intend to work the scheme, the patient having the right of choice of doctor from

the list. A Medical Practices Committee may refuse the application of a doctor to undertake general medical service under the Act in an area already adequately served by other doctors, or, if the number of applicants exceeds that of the doctors required, may make their selection. Once a doctor's name comes on to the list, he must not sell his practice. Heavy penalties are attached to the illegal sale or purchase of practices in these circumstances. A fund of £66 millions is set up to compensate the doctors who work under the Act for loss of their right to sell. If an executive council or anyone else represents that the continued inclusion in the list of a doctor, dentist, pharmacist or optician " would be prejudicial to the efficiency of the services in question," the matter goes to a tribunal consisting of a legal chairman appointed by the Lord Chancellor, a representative of the executive councils and a representative of the practitioners. The tribunal may direct that the name be removed from the list; on appeal the Minister may confirm or revoke the direction.

The 1946 Act, like that of 1911, depends upon the co-operation of the medical profession. As in 1911, the professional organization strongly opposed the new scheme both before and after its enactment in 1946, complaints being made of the Minister's power over the doctor's career and of the disturbance of the old relationship of doctor and patient. Criticism fastened on the element of nationalized service, on the prohibition of the sale of practices and on the proposed basis of remuneration (part salary, part capitation fees); the doctor, it was said, was being converted into a civil servant—evidently an opprobrious label. In so far as the features attacked were already prescribed by the Act itself, Parliament had decided what the law should be; subsequent argument, however, could concentrate upon the many matters still to be dealt with by Ministerial regulation in the interval before the Act took effect upon the appointed day.

Two statutes affecting Ireland may be briefly mentioned. The Unemployment and Family Allowances (Northern Ireland Agreement) Act confirms a new agreement between the Exchequers of London and Belfast (c. 3*). There had been Acts of the same sort in 1926 and 1936.

Volunteers from Eire served in H.M. Forces during the war; this jeopardized their benefits under the unemployment insurance legislation of Eire because their statutory contributions had not been maintained. An Unemployment Insurance (Eire Volunteers) Act arranges for benefit at the British rate for a limited period where these volunteers, returning home and finding no work, had no insurance scheme to fall back upon (c. 76).

**Education.**—An unexciting Education Act (c. 50), declared by Lord Maugham to be very well drafted (there was only one subsection which he could not comfortably construe), makes miscellaneous amendments in the great Act of 1944. Two may be mentioned. In an " aided school " or a " special agreement school," if the managers or governors think that on any special occasion the school day should begin with collective worship elsewhere than on the school premises, they may so arrange. This restores facilities for worship in a church or chapel which Church of England and Roman Catholic schools enjoyed under the Act of 1921. Secondly, there are additional powers of providing free clothing for pupils boarded at a maintained educational institution or nursery school or for pupils in a nursery class. The concession is valuable to the residential special schools attended by mentally or physically handicapped children; the 1944 Act left the parent liable to contribute.

**Agriculture.**—Food shortage demanded no less tillage in 1946 and 1947 than in 1944—if possible, even more. An Agricultural Development (Ploughing up of Land) Act extends the ploughing grants of £2 per acre, hitherto available for seven-year and older grassland, to three-year and older grass (c. 32). Something is done for the hill-farmers; they had profited little from the better markets during the war; wages had nearly doubled. Under the Hill Farming Act (c. 73) " improvement grants " are made available. Where owner and tenants agree

on a scheme, the Minister (if satisfied as to the land and cost) may pay half the expense. Should the work be badly done, the Treasury can recover the grant. Neither rents nor compensation are to be increased by reason of the receipt of Government money. S. 10, allowing regulations to attach conditions to the letting of new or reconditioned cottages, aroused the usual controversy between the farmers who must find accommodation for their workers and the critics who object to so-called " tied houses." Subsidies for hill sheep and hill cattle are continued. Departmental regulations may control the keeping, inspection and marking of rams in England and Wales and the burning of heather or grass, already thus regulated in Scotland. Covenants against such burning may be relaxed by the Minister. Advisory committees and local committees are to be set up under the statute. Public money is also forthcoming under the Agriculture (Artificial Insemination) Act for research and services in developing and improving the breeding of " livestock, including poultry and bees " (c. 29). Grants may be made for " cattle insemination centres."

**Trade and Commerce.**—The Assurance Companies Act of 1909 is amended. Marine, aviation and transit insurance business is brought within its compass (c. 28). To restrain the formation of mushroom companies, no one henceforth may carry on insurance business in Great Britain except an incorporated company with a paid-up capital of not less than £50,000. To maintain a proper margin of solvency, the Board of Trade may step in earlier than has previously been possible. An assurance company will be deemed unable to pay its debts if the value of its assets does not exceed the amount of its liabilities by £50,000 or by one-tenth of its general premium income in its last preceding financial year, whichever is the greater. The old system under which an insurance company had to deposit £20,000 with the Supreme Court is abolished.

Under the Patents and Designs Act (c. 44) an inventor whom the war has prevented from working his patent may obtain a compensatory extension of its term more easily and cheaply than the previous law allowed. Those whose patents or designs were communicated under inter-governmental agreements " for the supply or mutual exchange of information or articles " obtain fresh protection and priority over any subsequent applicant. Finally all German and Japanese inventions of the war period are thrown open without restriction. In part these provisions follow interim recommendations of the committee over which Mr. Kenneth Swan presided.

**Housing and New Towns.**—A Housing (Financial and Miscellaneous Provisions) Act settles the subsidy which the Exchequer will pay to local authorities for each house they build to the Minister of Health's approval (c. 48). It also fixes the minimum amount which the local authorities must themselves contribute from the rates. The ratio of Exchequer grant to rate contribution is three to one. There may be additional subsidy for special needs—for instance, for flats erected on expensive sites (if the flat has at least three storeys above the ground floor) and for acquiring rights of support and protection against subsidence such as might occur in mining districts. Accommodation for the agricultural population or in Government war buildings is also dealt with. Another Act (c. 54) makes similar provision for Scotland.

The housing shortage is reflected also in the Furnished Houses (Rent Control) Act, which follows the lines of a Scottish statute of 1943. Tenants of unfurnished premises were substantially protected by existing law, but landlords of furnished premises could drive exorbitant bargains, one of their devices being to make a heavy charge for " service." There are now to be district tribunals, consisting of a chairman and two members; they may approve a rent, reduce it or dismiss the reference. The dismissal leaves the landlord free to increase the rent at the end of the contract period. If the contract includes " services " (such as attendance, lighting, heating and hot water supply), the tribunal may award a reasonable increase if it thinks the extra cost of the services since September, 1939,

should be taken into account. The Act (c. 34) defines " rent." Local authorities will prepare and keep registers of rents; payments above the registered rent are illegal.

The Building Restrictions (War-Time Contravention) Act relates to structures erected by private persons or by or on behalf of Government departments on Crown land, requisitioned land or private land. Building Acts and by-laws and town and country planning controls might have been ignored and infringed in the war-time improvisations to obtain increased output and dispersed production. Normally a local authority cannot enforce the Public Health Acts after 12 months without expensive proceedings in the High Court. The new Act (c. 35) secures their right to obtain, notwithstanding the lapse of time, a decision that the law has been contravened. Some of the buildings are valuable and represent a large sum of the tax-payers' money. A five-year period is allowed for deciding the fate of any of these in the light of post-war conditions.

Revolutionary housing developments are authorized by the New Towns Act (c. 68). It owes much to the report (Cmd. 6153) of the Royal Commission on the Distribution of the Industrial Population which advocated the dispersal of industry from congested urban areas by means of garden cities, satellite towns or the enlargement of existing small towns. An interim report of the Reith Committee on New Towns (Cmd. 6759) worked out some practical proposals and indicated the legislation required. The Minister of Town and Country Planning, under s. 1 of the Act, may make an order designating an area as the site of a proposed new town, if he is satisfied (after consulting the local authorities concerned) that it is expedient in the national interest that the area should be developed as a new town by a corporation established as the Act provides. Before making his order, he must advertise his intention and allow objectors to be heard at a public local inquiry. He must " consider the report of the person by whom the inquiry was held " before he makes the order. Opposition, of course, is to be expected from local residents who do not want their area to be designated or developed; they may find difficulty in deterring the Minister from the drastic purpose already disclosed in the propounding of the draft order.[3] An order designating an area as the site of a proposed new town may include an existing town or centre of population.

To develop the new town, the Minister must by order establish a " development corporation." Its objects are to lay out and develop the site, to acquire, manage and dispose of land, to build, to provide water, electricity, gas and sewerage, and to carry on businesses and undertakings. The Act arranges for financing the corporations and for the compulsory purchase of land. The Minister is understood to contemplate creating twenty of these new towns with populations of from 30,000 to 60,000 apiece.

**Compulsory Purchase of Land.**—To obtain land quickly for housing and other purposes, the Acquisition of Land (Authorization Procedure) Act makes new provision, in part temporary (c. 49). For this purpose the provisional order procedure was first introduced into the Local Government Act, 1858, as a substitute for a Private Bill. Its stages, however, were deliberate—the advertisement of the proposals in local newspapers, the service of notices on owners, lessees and occupiers, the local inquiry (if objection was made and not withdrawn) and finally the Confirming Bill in Parliament. The Housing, Town Planning, etc., Act, 1909, invented the compulsory purchase order which was confirmed by departmental action. In 1930 the Public Works Facilities Act tried to save further time, but the Act was temporary, though in part prolonged by Expiring Laws Continuance Act. S. 1 of the new Act of 1946 codifies a procedure substantially

[3] See the Stevenage case (*Franklin and Others* v. *the Minister of Town and Country Planning*) (1947), 63 T.L.R. pp. 143, 185, and 446. " The object of the inquiry," said Lord Thankerton, " is to inform further the mind of the Minister and not to consider any issue between the Minister and the objectors ; that is for the Minister thereafter to consider and determine."

similar to that of the Local Government Act of 1933 to enable public authorities to take private land. A local authority, before submitting the proposed order to the Minister, advertises it locally and, unless the Minister otherwise directs, serves the usual notices. If there is no objection the Minister may confirm the order with or without modification; if there is objection, there must first be a local inquiry or (the alternative is novel and is expected to encourage agreement) the objector may appear and have a hearing before someone appointed by the Minister. The local authority may enter and take possession at 14 days after the notice to treat; the compensation is left to be settled at leisure.

For five years, under s. 2 of the new Act (which is comparable with the Housing (Temporary Accommodation) Act of 1944), the Minister can act even more quickly if satisfied that the local authority should purchase land for a statutory purpose and that it is " urgently necessary in the public interest " that possession should be obtained without delay. The local authority serves its notice (by affixing it to the site) on persons affected; they have 14 days in which to make representations to the Minister; he gives an authorization in writing, and the local authority can thereafter, not earlier than seven days or later than three months, enter and take possession, notwithstanding that the purchase has not been completed. The Act gives some protection to commons, open spaces and National Trust land. Purchases of war-damaged land must be notified to the War Damage Commission. The Minister of Town and Country Planning is given power to extinguish certain public rights of way over land acquired; the new method is quicker than the old application to quarter sessions.

**Roads and Railways.**—In 1936 Parliament named certain " trunk roads " (" the national system of routes for through traffic ") and made the Minister of Transport responsible for maintaining and improving them; the various local authorities were employed as his agents for the trunk roads in their particular areas: they remained responsible for other roads themselves as before. It was a rigid scheme, affecting some 4,500 miles of highway; the Minister could make deviations and by-passes as a matter of engineering and alignment, but he could not add to the mileage for which he was responsible. Moreover where a trunk road passed through the County of London or a county borough, it ceased for that distance to be a trunk road. The 1946 Act (c. 30) is more elastic. It transfers to the Minister as trunk roads a further 3,685 miles; it names various lengths of road through county boroughs which will henceforth be trunk roads, and it empowers the Minister to build new routes as trunk roads or to direct that existing trunk roads lose their status. He is to " keep under review the national system of routes for through traffic " and to consider " the requirements of local and national planning, including the requirements of agriculture." He can remodel road junctions, construct bridges or tunnels and make other improvements.

The " fourth quinquennial period " for the purpose of the railway valuation roll and the amount of the railways' liability for rates covered the years from 1940 to 1944. These were years of Government control, with clearing-house arrangements in suspense. How then could the Railway Assessment Authority determine the net receipts of each company? A new Railways (Valuation for Rating) Act deals with this problem (c. 61). The average annual pooled receipts for the period were known; somehow the percentage increase in net receipts over the figures for the 1935–9 quinquennium was worked out, and figures of net annual values were evolved and scheduled to the Act. One section of the Act will be seen to be related to the decision in *Worthington Corporation* v. *Southern Railway* [1943] A.C. 593.

**Water Supply.**—The Water (Scotland) Act of 1946 (c. 42) is the counterpart of the 1944 Act, which applied to England and Wales. It opens similarly with the duty of the central authority—to promote conservation of the country's water resources and the provision by local authorities of adequate water supplies. The general law of water supply in Scotland, previously to be sought in some 14

statutes, is consolidated. An Act of 1919 had required water to be laid on to a house where " reasonably practicable." S. 53 of the new Act requires all buildings erected in future to have a piped supply for the domestic purposes of persons occupying or using the building. Partly in the body of the Act and partly in the 3rd and 4th schedules there is a new code to replace the Waterworks Clauses (Scotland) Acts of 1847 and 1863.

**Local Government Arrangements.**—Police Acts for England and Wales (c. 46) and for Scotland (c. 71) provide machinery for amalgamating the smaller police forces. Where voluntary agreement is not reached, the Secretary of State can make a compulsory scheme. There is compensation for officers prejudicially affected. Forces in England had been temporarily amalgamated during the war under Defence Regulations. The two Acts also arrange for acquisition of land for police needs.

The General Exchequer Grants to English and Scottish local authorities are enlarged for three years by two other Acts (cc. 24 and 25). These grants, payable in aid of local expenditure, were fixed in 1937 and stabilized temporarily in 1941; revision was due in 1947, but the future level of local expenditure was so uncertain that some interim adjustment in the form of a substantial increase was desirable.

The Association of County Councils in Scotland was founded in 1894 by an Act which authorized the constituent councils to subscribe up to £30 per annum and to pay the reasonable expenses of their representatives in attending the Association's meetings. Now the Association needs a whole-time staff and has much higher expenses. A new Act (c. 77) allows councils to contribute by levying a rate of one-twelfth of a penny in the pound, deals afresh with the expenses of members attending meetings, and provides for superannuation of the Association's employees.

**Atomic Energy.**—Hiroshima and Nagasaki had demonstrated that atomic energy was a destructive force which no Government could neglect to supervise. The Atomic Energy Act (c. 80) designates the Minister of Supply as the appropriate Minister responsible for controlling the use and development of atomic energy. He receives statutory powers to produce and use it, to conduct research and give grants to persons engaged in this work. There is power to obtain information and to enter and inspect premises. The Ministry may search for the sources of metals, may compensate for damage done, may acquire by compulsion the right to work the minerals, and may secure the materials and plants. The activities of private concerns may be supervised under a licensing system. There are significant provisions for secrecy, both in general and in relation to applications for patents. In an invention of such far-reaching possibilities the Government naturally reserves the right to use any development on terms to be settled by agreement or arbitration.

**Subordinate Legislation.**—The delegation of legislative power is now so intrusive and recurrent an element in law-making at Westminster that the Statutory Instruments Act (c. 36) deserves a full summary. The Rules Publication Act, 1893, and the Treasury regulations thereunder, had stood unchanged for over 50 years—a tribute to the sage draftsmanship of Sir Henry Jenkyns. But the authoritative report of the " Donoughmore " Committee (on Ministers' Powers) in 1932 had demanded a new Act, and in 1944 a Special Report from the Select Committee of the House of Commons on Statutory Rules and Orders, sometimes called the " Scrutinizing Committee," had repeated the demand. In some respects, namely in the mechanics of official numbering, printing and sale (s. 2) and in the acceptance of a mere notice in the *Gazette* of the making of an instrument in lieu of gazetting of the full text (s. 12(2)), the Act of 1946 reproduces that of 1893. Otherwise, as will be seen, there are important changes.

The new and wider label of " statutory instruments " is adopted in place of " statutory rules and orders." The new label will include the exercise of a power

(by His Majesty in Council or by a Minister of the Crown) not only to make, but also to confirm or approve, orders, rules, regulations or other subordinate legislation; the Treasury regulations of 1894 had excluded exercises of a merely confirmatory power. There is machinery in s. 9 for bringing into the system exercises of a power conferred by a previous Act otherwise outside the system, and also for excluding in exceptional cases the application of parts of the new Act to what otherwise would have been within it.

One novelty is the linking of operation to publication. Henceforth, in proceedings for any alleged offence against a statutory instrument—

> " it shall be a defence to prove that the instrument had not yet been issued by His Majesty's Stationery Office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the person charged."

This does not, one may hope, imply an obligation upon every citizen to study newspapers or listen to the nine o'clock broadcast for fear of missing a departmental announcement. The section contains an express saving for " any enactment or rule of law " concerning the time at which an instrument comes into operation; perhaps Mr. Justice Bailhache's decision in the civil case of *Johnson* v. *Sargant & Sons* [1918] 1 K.B. 101, does not quite stand where it did. To help a defendant, it is required that the Stationery Office shall publish lists showing the date of the first issue of each instrument; the list will be conclusive evidence of the date in legal proceedings.

An old formula, common in enabling Acts, used to direct that rules and orders be laid before Parliament " as soon as may be." The vagueness of these words is cured by s. 4 of the new Act which stipulates that, where the parent statute requires instruments to be laid before Parliament, they " shall be so laid before the instrument comes into operation." A proviso to the section deals with cases where it is " essential that any such instrument should come into operation before copies thereof can be so laid." In these cases " the instrument may be made so as to come into operation before it has been so laid," but it is stipulated that—

> " notification shall forthwith be sent to the Lord Chancellor and to the Speaker of the House of Commons drawing attention to the fact that copies of the instrument have yet to be laid before Parliament and explaining why such copies were not so laid before the instrument came into operation."

Thus the legislature preserves some supervision of the process of laying.[4] To facilitate the operation of s. 4, every copy of any such instrument shall bear on its face a statement showing the date on which it came, or will come, into operation, and either a statement showing the date of laying or a statement that copies are to be laid.

The next novelty is that where a parent Act obliges instruments to be laid before Parliament and be subject to annulment on a resolution of either House, the " resolution period " shall uniformly be 40 days. This is a valuable standardization; in the past the parent Acts have prescribed periods as various as 20, 25, 40 and even 100 days.[5] Where an instrument must be laid in draft for a period and either House can resolve that the draft be not converted into a substantive instrument, the period of 40 days is similarly made uniform. Moreover the method of reckoning the days is standardized according to the now usually accepted formula; in the reckoning " no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days "; thus the end of a session or of a Parliament does not wipe the slate clean to the extent of requiring a subsequent re-laying.

[4] See, however, the House of Commons Standing Order as to presentation of instruments at any time, *Hansard, Commons*, November 4, 1947, cols. 1783–4.

[5] See 40 & 41 Vict. c. 57 s. 69, altered in 1942 by 6 & 7 Geo. 6, c. 2 s. 2; 100 days were not easily obtained in a session of the House of Lords.

A minor point of mechanics in the Parliamentary control of departmental law-making will be found in s. 5. If a resolution for annulment is successfully moved, the instrument to be killed will not be automatically revoked by the resolution, but will be formally annulled by an Order in Council. As there might be an interval of days or weeks before the next meeting of the Council, the instrument is to cease to operate meanwhile.

Finally there is a power, as in the 1893 Act, for the Treasury to make regulations for various purposes, including any exemptions from the statutory requirements. The Lord Chancellor and the Speaker may nominate a person or persons to determine various questions concerning publication and printing. Most of the sections in the new Act are drafted with twin subsections, one applying to statutory powers granted by future enactments, the other to those granted in the past.

**Statutory Rules and Orders.**—The total of Statutory Rules and Orders made during 1946 and registered under the Rules Publication Act was 2,287, consisting of 1,291 general and 996 local instruments. The corresponding total for 1945 was 1,706 (1,179+527). As usual, the official edition containing the text of the general rules and orders of the year occupies two volumes, and these are so arranged that one contains all the delegated legislation flowing from the Emergency Powers (Defence) Acts,[6] while the other contains that which flows from all other statutory powers. In the past four years the volume containing the emergency material has been bigger, sometimes very much bigger, than the other. In 1946 the proportion is reversed; the emergency volume is the shorter by some 700 pages. In a casual glance at the larger volume one notes the considerable bulk of departmental orders about the coal industry, about maximum prices under the Goods and Services (Price Control) Acts, and about wage regulation under the Catering Wages Act and the Wages Councils Act. Here also is the Order in Council approving the proclamation which determines the design of the new cupro-nickel coins, and the Malayan Union Order in Council. Readers will not need to be reminded that the written law of modern Britain must not be sought in the statutes alone.

## 2. NORTHERN IRELAND

[*Contributed by* W. A. Leitch, Esq.]

Twenty-eight public general Acts were passed by the Parliament of Northern Ireland in 1946.

**Finance.**—The Finance Act (c. 1) deals with three matters, namely, duties on licences for motor vehicles, estate duty and entertainments duty. The basis of taxation of mechanically propelled vehicles is changed from horse power to cylinder capacity, the unit of which is to be 100 c.c.; the tax is £1 on each unit or part thereof, with a minimum charge of £7 10s. A concession to certain motorists is made by the dropping of the additional duty of two pounds imposed on vehicles used for drawing trailers. S. 2 contains provisions for giving effect to agreements made with the government of any territory outside the United Kingdom for the purpose of affording relief from double estate duty. Where all the net proceeds of an entertainment are devoted to charitable or philanthropic purposes and not more than thirty per cent. of the takings is used for expenses, relief from entertainments duty may be obtained under s. 3 (2) of the Finance Act (Northern Ireland), 1939. S. 4 of the present Act raises that figure from thirty per cent. to fifty per cent.

The second Finance Act of the year (c. 17) is divided into six parts under the following heads: (I) Death Duties; (II) Entertainments Duty; (III) Stamp Duty; (IV) Mechanically-propelled Vehicle Duty; (V) Liquor Licences; (VI) Miscellaneous and general. Part II of the Act which deals with entertainments duty

[6] And, on this occasion, in 1946, also from the Supplies and Services (Transitional Powers) Act, 1945, which continues various emergency powers.

reduces the duty on boxing exhibitions and enlarges the exemption applicable to entertainments provided by non-profit-making bodies. S. 21 adds boxing matches to the list of entertainments " in which the performers are personally present " set out in s. 1 (3) of the Finance (Entertainments Duty) Act (Northern Ireland), 1939, to which a reduced rate of duty is applicable. A purely amateur boxing match will continue to qualify for total exemption under s. 8 of the Act of 1939. In the stamp duty sections provision is made (ss. 24 to 28) for rendering documents connected with unit trust schemes liable to stamp duty in the same way as similar documents used in connection with investment trust companies established under the Companies Acts. S. 29 and the Fifth Schedule, which have effected some amendments of the already much amended Schedule to the Finance Act (Northern Ireland), 1937, perform a useful function by completely re-writing that Schedule, which is now self-contained. Increases which are made in rates of duty for agricultural tractors do not affect the special temporary concession given by the Finance Act (Northern Ireland), 1943, s. 2, under which tractors used on public roads " for hauling agricultural produce of. or articles required for, agricultural land " are chargeable with only five shillings duty. Reliefs from liquor licence duty granted by ss. 5 and 6 of the Finance Act of 1942 to meet diminished trade due to war circumstances are by s. 32 continued until the second general revaluation of rateable property comes into force by virtue of s. 1 of the Valuation Acts Amendment Act (Northern Ireland), 1946.

**Housing.**—The Housing and Local Government (Miscellaneous Provisions) Act (c. 4), makes provision (s. 1) for the payment of subsidies to private persons, in respect of the erection of workers' houses through the local authorities on a basis comparable with that on which subsidies are payable to local authorities under the Housing Act (Northern Ireland), 1945. S. 2 contains stringent conditions attaching to the houses for a period of ten years which are designed to ensure that subsidized houses will be let to workers and not sold for occupation by the purchaser. Ss. 5 to 8 enable the Government to make structures for temporary housing available to local authorities, and provide for the management of such accommodation by those authorities under the Housing Code. S. 16 is an important section which makes it an offence for any person, without the permission in writing of the local authority, to demolish, or to use otherwise than as a dwelling-house, any house which in the opinion of the local authority was reasonably fit, or reasonably capable without substantial alterations of being rendered fit, for human habitation; a refusal of such permission is subject to an appeal to the Ministry of Health and Local Government (s. 16 (2)). An offence is not committed under the section if the house was used for purposes other than a dwelling-house before the date of the passing of the Act or if the demolition or user is authorized by or under any other enactment. The section is temporary and will expire on December 31, 1950.

The Housing (No. 2) Act (c. 20), is of interest chiefly because it introduces (Part III) a system of subsidies to private builders who build houses for their own occupation. The main provision of Part I alters the contributions payable under the Housing Act (Northern Ireland), 1945, by the Ministry of Health and Local Government to local authorities, to the Housing Trust and to housing associations in respect of housing accommodation erected for workers. In future any variation in these financial arrangements will be carried out by order of the Ministry. Part II amends the Housing and Local Government (Miscellaneous Provisions) Act (Northern Ireland), 1946 (referred to above) in its relation to private subsidized house building under housing schemes approved by local authorities. The first Act of 1946 provided in s. 1 that ten annual contributions were to be paid by the local authority in respect of each house completed before October 1, 1947. S. 5 of the second Act substitutes a single lump sum payment for the annual amounts in respect of a house completed before June 1, 1947, and s. 15 gives the Ministry power to prescribe by order the amounts to be paid in respect

of houses completed after that date. S. 15 contains an important safeguard against any interim reduction of contributions. Part III of the Act, as already indicated, introduces a system of owner-occupier subsidies. The scheme embodied in those provisions falls into three divisions: (1) Houses which attract grants; (2) Obligations of grantees; (3) Penal provisions.

(1) The type of house which will attract a subsidy is specified with great particularity, and the payment by the local authority of the grant is subject to numerous restrictions. Where these conditions are satisfied the local authority are to pay lump sums of £150, £225, and £250 in respect of houses with three, four, and five apartments, respectively.

(2) The obligations of the recipients of the grants are dealt with in s. 7. It is a condition precedent to the payment of the grant that the owner should execute an instrument under seal containing various restrictive covenants set out in the section which are to be operative for a period of five years from the date of payment.

(3) In addition to the civil remedies available s. 8 provides heavy penalties for breaches by the grantee of the statutory conditions. The selling of a subsidized house at a price higher than the maximum allowed under the Act, the amalgamation of such a house with another house, and the carrying out of certain structural alterations are made criminal offences to be visited with heavy fines and, in the first-mentioned case, imprisonment.

**Summary Jurisdiction Matters.**—S. 1 of c. 5, the Summary Jurisdiction (Miscellaneous Provisions) Act, is interesting from a legal point of view in that it makes trespassing on certain premises a criminal offence, if done with a specified intent. The section is designed to provide a speedy method of dealing with the bands of so-called " squatters " which formed as a result of the acute housing shortage. The premises concerned include any buildings, whether normally used for residential purposes or not, and any buildings in the course of construction and makes it an offence for any person to enter upon such premises " with intent wrongfully to take possession of or use " them. A person is guilty of the same offence who before the passing of the Act wrongfully entered on premises and refuses to leave within seven days of possession being demanded. The offence, which is triable summarily, is not committed where a person proves that he acted under a *bona fide* and reasonable belief that he was lawfully entitled to enter or use the premises. Subsection (2) enables the court before which a person is convicted of an offence under the section to issue a warrant directing that the person who appears to be lawfully entitled be put into possession by the undersheriff. S. 2 makes a small amendment to s. 15 (1) (a) of the Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935. That section made the summary procedure for recovery of possession available only in respect of houses which were let at a rent not exceeding twenty-six pounds a year. The amendment raises the figure to twenty-seven pounds with the object, apparently, of including a dwelling let at ten shillings a week. S. 3 repairs the damage done to s. 3 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland), 1945, by a private member's amendment during the passage of the Bill which had the effect of removing from the clause in question certain of the operative words. The present amending Act provides for the re-printing of the Act of 1945 in the correct form, thus avoiding the necessity of a reference to the amending Act. S. 4 is a useful provision the effect of which is to make affiliation orders providing for the payment of a weekly or other sum enforceable in the same way as an order for such payment under the Summary Jurisdiction (Separation and Maintenance) Act, 1945 (Northern Ireland); the important point is that under the latter Act a warrant may be issued to bring back a defaulter who has left Northern Ireland and is living in Great Britain.

**Public Health.**—Statutory provision for considerable changes in the administration of public health services has been made by c. 6, the Public Health

(Tuberculosis) Act, and c. 19, the Public Health (Administrative Provisions) Act. The former Act provides for the establishment of a single tuberculosis authority exclusively charged with the treatment and prevention of the disease anywhere in the country. Thus it replaces the councils of counties and county boroughs in this field and the functions of those bodies under the Tuberculosis Prevention (Ireland) Acts, 1908 and 1913, and their assets used for the purposes of those functions are transferred to the new authority. Part III, which deals with the prevention of infection, makes tuberculosis a compulsorily notifiable disease (s. 13). A court of summary jurisdiction is empowered by s. 16 to make an order directing the removal of " an infectious person " to hospital when a serious risk exists of infection being spread.

The councils of counties and county boroughs are by c. 19 constituted health authorities and welfare authorities for their respective areas; and to these new authorities there will be transferred most of the personal health services maintained by local authorities and boards of guardians under existing legislation. Services such as maternity and child welfare, immunization against diphtheria, and prevention of infectious disease will be the subject of transfer orders made by the Ministry of Health and Local Government. No further elections of boards of guardians will be held, and guardians in office at the passing of the Act are to remain in office until the abolition of the boards under Part IV of the Act.

**Shops.**—The Shops Act, c. 7, is a lengthy and detailed statute which effects a consolidation with some amendments of the law relating to shops. It repeals and replaces, with amendments and additions, the Shops Acts, 1912 and 1913. Part I deals with hours of closing; Part II with hours of employment and holidays—including arrangements for the health and comfort of persons employed in shops—and contains special provisions regulating the employment of young persons.

**Elections and Franchise.**—1946 saw the resumption in Northern Ireland of local government elections after a break during the war period. The Elections and Franchise Act (c. 8) which makes provision for this resumption also effects some changes in the parliamentary and local government franchise and in election machinery generally. The Act repeals all but a very few of the provisions of the Representation of the People Act, 1918, under which, as amended from time to time, parliamentary elections have been held in Northern Ireland since the setting up in 1921 of the Parliament of Northern Ireland. The parliamentary franchise which is dealt with in s. 1 is substantially the same as under the pre-1939 legislation. Points of difference are that the qualifying period is reduced from six to three months and the necessity of Northern Ireland birth or alternatively of seven years' continuous residence in the United Kingdom is extended to the business premises qualification. The service qualification as it existed under the war-time legislation is continued. S. 2 maintains the local government franchise based on rateable occupation substantially as it was prior to 1939. An important change, however, is the abolition of the lodger vote. The qualifying period is reduced to three months, which will also be the period for the company franchise under s. 3, as it is for the Parliamentary. Subsections (6) to (10) of s. 2 contain special provisions for the 1946 register designed to extend the local government franchise for that register to persons who would be likely to qualify under the general provisions if emergency conditions did not exist. The preparation of the triennial registers is placed in the hands of electoral officers, who will be the secretaries of the county councils and the town clerk of Belfast (s. 17), assisted by deputy and assistant electoral officers. S. 44 provides for triennial elections of all local authorities with the exception of aldermen for the county borough of Belfast, who will hold office for six years. Casual vacancies will be filled by bye-elections in county boroughs and boroughs and elsewhere, as formerly, by co-option.

**The Local Government Elections (Validation) Act** (c. 27) validated the elections,

as members of local authorities, of six school teachers who had become candidates under a not unreasonable misapprehension of their rights; the members are also "saved harmless" from the penalties which they would otherwise have incurred for sitting and voting while disqualified. It may be noted that in similar contexts English draftsmen have recently used the word "indemnified" where the Northern Ireland draftsman has used "saved harmless" (see, for example, s. 1 of the Camberwell, Bristol and Nottingham Elections (Validation) Act, 1946, the relevant part of which provides ". . . and they shall be and are hereby discharged, freed and indemnified from all penal consequences whatsoever . . .").

**Valuation.**—S. 1 of the Valuation Acts Amendment Act (c. 12) postpones until 1951 the second general revaluation which under s. 1 (1) of the Valuation Acts Amendment Act (Northern Ireland), 1932 (as amended by the Valuation Acts Amendment Act (Northern Ireland), 1940), would have been made in the current year. Pending the postponed second general revaluation in 1951, the basis to be adopted for valuation purposes on annual revision is to be the rental value immediately prior to the war or at the date of revision, whichever is the lower. S. 3 makes a corresponding postponement in relation to the next quinquennial valuation of railway undertakings under the Railways (Valuation for Rating) Act (Northern Ireland), 1932. The basis for the valuation of factories in which motive power is derived from electricity not generated on the premises is altered by s. 4, which limits the assessment to primary electrical equipment, and excludes equipment used for power purposes after the main distribution switchboard has been passed. S. 5 reduces from ninety to sixty days the maximum time for lodgment of notices of valuation appeals in the county boroughs of Belfast and Londonderry.

**Perjury.**—The Perjury Act, 1911, does not apply in Northern Ireland; and the Perjury Act (c. 13), with the exception of certain provisions, follows the Act of 1911. S. 1 (4) of the new Act is a provision which makes the breaking of an oath before a Tribunal sitting in any of the Dominions or in a foreign State punishable as perjury in Northern Ireland. The Northern Ireland (Miscellaneous Provisions) Act, 1945, passed at Westminster empowered the Northern Ireland Parliament to enact this provision, which, having an exterritorial effect, would otherwise have been beyond the competence of that Parliament.

**Nurses.**—The Nurses Act (c. 15), amongst other things, establishes a roll of "assistant nurses," provides for the licensing of agencies for the supply of nurses, and defines and protects the title of "nurse."

**Marriage and Matrimonial Causes.**—The Marriage and Matrimonial Causes Act (c. 16) provides in ss. 1 and 2 for the extension of the hours between which certain marriages may be solemnized, and requires that the ages in years of the parties to a marriage are to be stated on registration. S. 3 follows the United Kingdom Matrimonial Causes (War Marriages) Act, 1944, in conferring on the Northern Ireland Supreme Court matrimonial jurisdiction in certain cases irrespective of domicile. For the enactment of this last provision special power was conferred on the Northern Ireland Parliament by the Act of 1944.

**Loans Guarantee and Borrowing Regulation.**—The Loans Guarantee and Borrowing Regulation Act (c. 18) corresponds to the Borrowing (Control and Guarantees) Act, 1946, which applies to Great Britain; and when the regulations under the Northern Ireland Act come into operation, the effect of the two measures will be almost identical.

**National Insurance.**—The National Insurance (Industrial Injuries) Act (c. 21) and the National Insurance Act (c.23) are the Northern Ireland versions of the "Beveridge" legislation for Great Britain. Amongst other matters, provision is made for reciprocal arrangements between Northern Ireland and Great Britain.

**Dog Racing.**—C. 22, the Dog Races (Restriction) Act, brings dog races and dog trials under strict control, by providing that premises may be used for races or trials only under licence of the Minister of Home Affairs. A distinction is made

between premises which were, and premises which were not, used as dog tracks prior to December 31, 1945. In the latter case, s. 2 (3) enacts that an application for a licence shall not be entertained by the Minister until a number of preliminary steps have been taken including publication of notices in newspapers and (if the Minister thinks fit) the holding of a public inquiry. The duration of licences and the conditions upon which they are granted are in the main left to the discretion of the Minister. This discretion is not completely free since the following conditions *inter alia* must be inserted in any licence: (1) that races or trials will not be held on a Sunday, Good Friday, or Christmas Day; and (2) so far as is practicable persons under the age of eighteen years shall not be admitted to premises where dog races or trials are being held. In relation to the latter condition, it is interesting to recall that during the passage of the Bill which ultimately became the Marriage and Matrimonial Causes Act (Northern Ireland), 1946 (mentioned above), Parliament rejected a clause which would have had the effect of raising the permitted age of marriage to sixteen years, instead of twelve and fourteen years now requisite for a girl and boy respectively. Provisions contained in s. 3, which authorize the payment of compensation to promoters of existing tracks whose applications for licences are refused by the Minister, are modelled on corresponding provisions in the Intoxicating Liquor Act (Northern Ireland), 1923.

## 3. ISLE OF MAN

[*Contributed by* His Honour R. D. Farrant.]

The year 1946 was an active one in the sphere of legislation in the Isle of Man.

**Income Tax.**—Certain amendments to the Insular Income Tax Act which repealed and largely re-enacted the sixteen previous Acts dealing with the subject. The Act sets up a body of Income Tax Commissioners consisting of one of the Deemsters and two other members appointed from time to time by the Governor with the approval of Tynwald.

**Intoxicating Liquor.**—The Intoxicating Liquor Acts were amended by prohibiting the sale of intoxicating liquor on licensed premises to young persons under 18 years old.

**Road Traffic.**—The Road Traffic Act made further provision for the lighting up after dark on the roads of bicycles or tricycles not propelled by mechanical power.

**Larceny.**—The Larceny Act defines the various forms of larceny and other crimes and the maximum punishments therefor.

**Family Allowances.**—The Family Allowances Act provides for the payment of weekly sums in respect of children to the same extent and on the same terms as in the Imperial Act.

**Disabled Persons.**—Provision was made in the Disabled Persons (Employment) Act for vocational training and industrial rehabilitation to be supplied to disabled persons and for the employment of such persons in accordance with the quota laid down by the Act and provision for such persons who were seriously disabled for work on their own account. Preference is given in all cases dealt with by the Act to ex-Servicemen.

**Agricultural Rates and Improvements.**—By the Agricultural Rates and Improvements Act all the statutory definitions of improvements were extended to the reconstruction and improvement of farm buildings and cottages by the provision of light, heat and power by electricity, gas, hot and cold water, sanitary conveniences and baths.

**Tithes.**—By the Tithes Act all tithes are to be redeemed by September, 1951, for a sum agreed to thirty times its annual amount. The Insular Government is paying a sum equal to $3\frac{1}{3}$ times the amount.

Certain alterations in the names and composition of the principal local administrative Boards of Tynwald were made by the Isle of Man Local Government Board Act, the Isle of Man Board of Agriculture and Fisheries Act, the Isle of Man Highway and Transport Board Act, the Isle of Man Board of Education Act and the Isle of Man Board of Social Services Act. From these Boards the Lieutenant-Governor by agreement embodied in the Home Office directive chooses the various elected Chairmen who with certain other members form an executive council to advise him on matters requiring executive action.

**Pensions.**—By the Old Age, Widows and Orphans Pensions Act power was given to Tynwald by its resolution to amend or abrogate from time to time the scale of contributions, the rates of pension or the conditions laid down in the Acts to conform with the scale, rate and conditions from time to time operative in Great Britain in similar pensions. And alterations were made by resolution to operate from September 30, 1946, to so conform.

**Local Government.**—By the Local Government Act certain powers were bestowed on the local Government Board and the local authorities as to the provision of libraries and museums, public baths and wash-houses, the acquisition of land and laying out for games and recreation and the provision of apparatus, pavilions and canteens therefor, the acquisition of land with right to preserve amenities, the provision of parking places, the provision of medicine and medical assistance and nursing and of hospitals, maternity homes or homes for the aged and infirm, the provision of laboratories and ambulances and provisions for the care of mothers and young children.

## 4. EIRE

[*Contributed by* A. Denis Pringle, Esq., K.C.]

Thirty-eight Public Statutes were passed during the year, but a large number of them were amending Acts and the following are those of most general interest.

**Air.**—The Air Navigation and Transport Act (No. 23) provides for the coming into operation of the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944, and empowers the Minister for Industry and Commerce to make orders for carrying out the provisions thereof, or for applying those provisions to internal flying. Special regulations which may be made by the Minister include licensing, inspection and regulation of aerodromes, registration of aircraft, charges at licensed aerodromes, and regulation of aerial lighthouses and signals to aircraft. Aircraft disobeying signals while flying over a prohibited area may be fired at to compel compliance and the offender may be prosecuted. The Minister is also given power to detain aircraft in order to secure compliance with the Convention or with any order made by him under the Act.

**Censorship.**—Important amendments are made to the Act of 1929 by The Censorship of Publications Act (No. 1). An Appeal Board is set up under a Judge or practising barrister of not less than seven years' standing. If a prohibition order is made by the Censorship Board, the author, editor, or publisher, or any five members of the Dail or Senate may appeal to the Appeal Board, which may affirm, revoke, or vary the order. Customs officers are given power to detain on importation any book which in their opinion ought to be examined by the board, except a book carried by, or forming part of the personal luggage of, an incoming traveller. The board is given power to prohibit, for certain limited periods, the sale and distribution of periodical publications.

**Finance.**—The Finance Act (No. 15) reduces income tax to 6s. 6d. Allowances may be claimed in respect of non-capital expenditure on, or payments made for scientific research or mining development. Customs duties on spirits and wine are increased, and entertainment duty on balls and dances abolished. No duty

is payable on goods brought from abroad to a " Customs-free " airport, and goods supplied as gifts or loans to the Irish Red Cross Society by foreign Red Cross Societies are exempted from duty.

**Forestry.**—The Forestry Act (No. 13) extends the power of the Minister for Lands in regard to the acquisition of land, the planting of trees, making grants or loans for afforestation, research, etc., and empowers him to set up a Consultative Committee to give him advice and assistance in exercising those powers. The Act contains new provisions restricting the cutting down or injuring of trees, save under licence, and penalties are prescribed for injuring trees by ringbarking or otherwise. The Minister is given power to deal with rabbits or other vermin likely to damage trees or plants, and also with vegetation likely to cause a fire in an adjoining wood.

**Harbours.**—The Harbours Act (No. 9) is a comprehensive Act dealing with the management, control, operation and development of harbours, the charging of rates, provisions in regard to pilotage authorities and other similar matters. The constitution of Harbour Boards is re-organized and the powers and duties of Harbour Authorities and Harbour Masters defined.

**Hire-Purchase.**—The Hire-Purchase Act (No. 16) contains stringent requirements for hire-purchase and " credit-sale " agreements, which must be in writing, signed by all parties and must contain certain specified particulars as, for instance, the price at which the goods may be purchased. Provisions authorizing the owner to enter upon premises to take possession of goods, or increasing the liability imposed on a hirer under the Act, are void. Certain warranties similar to those in the Sale of Goods Act, 1893, are to be implied in hire-purchase agreements.

**Industry and Labour.**—By the Industrial Research and Standards Act (No. 25) an Institute is set up for the purpose of promoting industrial research, standardizing specifications for commodities, processes and practices, and testing and analysing commodities intended for sale. The Institute is State-endowed and has power to provide scholarships and other awards for the training of persons in industrial research.

Probably the most important Act of the year is the Industrial Relations Act (No. 26) which is a real attempt by the legislature to promote harmonious relations between workers and employers and to prevent and settle trade disputes. A Labour Court is set up, consisting of a chairman, appointed by the appropriate Minister, and four ordinary members, two nominated by workers' trade unions and two by employers' trade unions. No appeal lies from the decision of the Court on any matter within its jurisdiction. Agreements between workers' and employers' trade unions may be registered by the Court and breaches of such agreements are then punishable by a fine. The Court is given power in certain cases to fix the minimum rates of remuneration and conditions of certain employments, and to fix standard wages for unskilled work in any particular area. It may also investigate trade disputes and make recommendations as to the terms upon which they should be settled, but it cannot compel these terms to be carried out, except in cases where no workers' trade union is concerned, in which case it can make an Award which is binding on the employer for three months.

**New Ministries.**—The Ministers and Secretaries (Amendment) Act (No. 38) creates two new Departments of State, that is to say Health and Social Welfare.

**Rent Restriction.**—All existing Acts and Statutory Orders dealing with restrictions on rents and control of premises are repealed, and comprehensive new provisions laid down in the Rent Restriction Act (No. 4), which is to remain in operation until the end of 1950. Houses up to sixty pounds valuation in Dublin and forty pounds valuation elsewhere are controlled, provided they were erected, or in course of being erected, on May 7, 1941. In the main the Act follows the previous legislation in regard to control of rents and restrictions on obtaining possession, but special new provisions are enacted in regard to premises under

ten pounds valuation, in order to enable tenants of such premises to obtain relief under the Act by a more expeditious and cheaper procedure than that which must be adopted in regard to larger premises. Landlords obtain an advantage by the provision that overpayments of rent may only be recovered for six instead of for twenty years after payment.

## II. NORTH AMERICA

### 1. DOMINION OF CANADA

[*Contributed by* DR. MAURICE OLLIVIER, K.C., *Law Clerk, House of Commons, Ottawa.*]

THE Second Session of the Twentieth Parliament began on the fourteenth day of March, 1946, and closed by Prorogation on the thirty-first day of August, 1946. Of the 378 Acts passed and comprised in the statutes of 1946, 76 were Public, 12 were Private and 290 dealt with divorces. Public Bills were practically twice as numerous as in the preceding year and the number of divorces granted by private legislation was increased by over one hundred. The public legislation has continued to reflect the transition from war to peace, the trend having reached its maximum impetus during the session of 1946.

**Air Force.**—C. 32, amending the Royal Canadian Air Force Act, provides for the formation of Royal Canadian Air Cadet Squadrons, their administration and training.

**Atomic Energy.**—C. 37 provides means for promoting the development of atomic energy and for controlling it to such extent as may be required for public safety and the carrying out of international obligations.

**Citizenship.**—The purpose of c. 15, the Canadian Citizenship Act, is to define clearly the symbol of nationhood, the Canadian nationality or Canadian citizenship status. It achieves a new status of " Canadian citizen " which is an inclusive and definite status. Part I defines natural-born Canadian citizens and Part II Canadian citizens other than natural-born. The Act also provides for loss of Canadian citizenship, declares the status of aliens and provides for procedure generally. S. 26 states that " A Canadian citizen is a British subject."

The Immigration Act is amended by an Act to amend the Immigration Act (c. 54) so as to bring it in conformity with The Canadian Citizenship Act.

**Criminal Law.**—Two Acts have been passed amending the Criminal Code. C. 5 respecting race meetings regulates betting, pool selling and bookmaking. C. 20 deals with procedure in criminal cases in Alberta, providing *inter alia* for trial without intervention of a jury by consent and also for a jury of six instead of seven jurors.

**External Affairs.**—When the Department of External Affairs Act was passed in 1912 it was provided that the position of Secretary of State for External Affairs should be filled by the Prime Minister. The purpose of the Act to amend the Department of External Affairs Act (c. 6) is to provide that the position of Secretary of State for External Affairs may be filled by any member of the Government. Subsequent to the adoption of this measure Mr. Saint-Laurent, who up to then had been Minister of Justice, was appointed Secretary of State for External Affairs.

**Explosives.**—C. 7 defines explosives, provides for regulations classifying them, respecting their importation, packing and handling, manufacture and use. The Act also authorizes the Minister to issue licences for factories and magazines, provides for the appointment of inspectors and chemists and for inquiries into accidents.

**Federal District.**—The purpose of c. 51 is to amend the Federal District Commission Act, 1927, so as to enable the Commission to discharge more readily the

duties that will devolve upon it in connection with the development of the national capital area as a national war memorial. To assist in this, the Act provides for the appointment to the Commission of persons resident in parts of Canada other than the vicinity of Ottawa. Other terms of the Act involve changes incidental to the transfer to the President of the Privy Council of jurisdiction over the Federal District Commission.

**Finance.**—The Foreign Exchange Control Act (c. 53) creates a fund which may be used to aid in the control and protection of the value of the Canadian monetary unit in relation to foreign currencies. The Act further provides for supervision and control of transactions between residents of Canada and residents of other countries which involve or relate to foreign currency, Canadian currency, goods, securities or other property in Canada or elsewhere and other transactions of a kind capable of affecting Canada's resources in foreign currency, or relating to property in Canada of non-residents, or property outside of Canada of residents, so as to ensure that Canada's resources in foreign currency shall be made available to meet the needs of Canada as a whole.

**Judges.**—The new Judges Act (c. 56) increases the salaries of all superior court or district court or county court judges by one-third as from January 1, 1947.

The Act to amend the Exchequer Court Act (c. 22) increases the number of puisne judges of the Court from two to three.

**Merchant Seamen.**—C. 58 makes statutory provision for payment of Workmen's Compensation to merchant seamen employed on ships engaged in trading on foreign or home-trade voyages where provincial Workmen's Compensation Acts do not apply.

**Research.**—The Research Council Act is amended by c. 31 to provide for the appointment of two vice-presidents and of an executive committee of the council. The Act provides also for the creation of separate corporations to carry out certain powers of the council which may be more conveniently performed by separate organizations.

**Taxation.**—Agreements with the United Kingdom respecting taxation are approved by The Canada-United Kingdom Income Tax Agreement (c. 38) and The Canada-United Kingdom Succession Duty Agreement (c. 39).

Amendments have also been made to the Customs Tariff (c. 45), to The Dominion Succession Duty Act (c. 46), to The Excess Profits Tax Act (c. 47), to The Excise Act (c. 48), to The Special War Revenue Act (c. 64) and more specially to the Income War Tax Act (c. 55). This Act like the other budget measures, enumerated above, implements the resolutions introduced on June 27, 1946. It makes a substantial reduction in rates on personal incomes and reorganizes the whole structure of this tax which was previously unnecessarily cumbersome. The exemptions are being raised from $660 for single persons to $750 and from $1,200 to $1,500 for married persons. The rate schedules are overhauled and simplified. The Act also provides for a reduction in rate of tax on corporations and on profits of business enterprises from forty per centum to thirty per centum.

**Trade and Commerce.**—The Canadian Commercial Corporation Act (c. 40) creates a Corporation empowered to assist in the development of trade between Canada and other nations and to assist persons in Canada to import and export goods. Grants may be made to the Corporation up to ten million dollars.

The Export Credits Insurance Act of 1944–45 is amended (c. 49) to amplify and clarify its provisions. The amendments enlarge the purposes for which credits granted to foreign governments or agencies may be used. They permit a credit to be made available to private importers in the borrowing countries, to be used to purchase Canadian services and to be used to purchase goods from crown companies.

The amendments to the Combines Investigation Act (c. 44) are designed to facilitate efficient administration of the Act. They relate to investigations and court procedure concerning undue monopolistic trade restrictions and unlawful combinations in restraint of trade.

The Precious Metals Marking Act, 1946 (c. 26), is in effect a measure to amend and consolidate the Precious Metals Marking Act (c. 84 of the Revised Statutes of 1927, with amendments) which is repealed. The Act deals with gold, silver and platinum marking.

**Unemployment Insurance.**—The Unemployment Insurance Act, 1940, is amended (c. 68) to clarify the sections dealing with legal proceedings and coverage, which administrative experience has shown to be desirable.

The more substantive clauses include a widening of the interpretation of dependent, an increase of subsidiary earnings permitted from $1.00 to $1.50 per day, the calculation of the daily rate of benefit to the nearest five cents; making the Employment Service more directly responsible to the Minister; requiring employers to notify the engaging of employees and persons seeking employment to notify the Employment Service; and the transfer of sections of the Veterans Rehabilitation Act dealing with unemployment insurance to The Unemployment Insurance Act.

**Veterans.**—The Veterans' Charter has been enlarged and improved by the passing of new or amending Acts: The Civilian War Pensions and Allowances Act (c. 43) confers pension benefits on various classes of persons other than members of the armed forces such as merchant seamen, fishermen, auxiliary services personnel, corps of firefighters, etc.

Further amendments were also made extending the scope of the Pension Act for the benefit of veterans, also to The Soldier Settlement Act reducing interest rates, also to The War Service Grants Act dealing with supplementary gratuities and re-establishment credits.

Acts were passed granting War Service Benefits to Allied veterans (c. 36), to Fire Fighters (c. 52), to Special Operators (c. 64), to Supervisors (c. 66) and to the Women's Royal Naval Services and South African Military Nursing Service (c. 34).

The purpose of The Veterans' Business and Professional Loans Act (c. 69) is to encourage banks to provide funds additional to those granted by The War Service Grants Act for appropriate periods, and at a low rate of interest to veterans seeking to establish themselves in a business or profession.

The Act to amend The Veterans' Land Act, 1942 (c. 70), integrates the administration of this legislation more closely with other departmental activities administered by the Minister.

The Veterans Rehabilitation Act of 1945 is amended to provide loans for students (c. 71) and supplementary grants to universities (c. 72).

The War Service Grants Act of 1944 is amended (c. 74) to provide *inter alia* that a member who has joined the permanent forces prior to March, 1946, will not be affected in the amount of supplementary gratuity by reason of reduction in rank, and also to enable a veteran to take more complete advantage of the facilities of The National Housing Act, 1944.

The War Veterans' Allowance Act, 1946 (c. 75), replaces The War Veterans' Allowance Act, c. 48 of the statutes of 1930. The changes relate mostly to administration, personnel and procedure.

This Act constitutes a revision and consolidation of the former Act and of the amendments adopted during the war by Order in Council. It covers the veterans of four wars and it incorporates into the Act the widows' allowance measure approved by Parliament in the Appropriation Act of 1943.

The Reinstatement in Civil Employment Act, 1946, repeals the Civil Employment Act of 1942, supplementing its provisions so as to give full effect to its

purposes, thus assuring to members of His Majesty's Forces and other specified classes of persons who have undertaken special war services rights of reinstatement, on discharge from service, in the employment in which they were engaged at the time of acceptance for service.

**War Crimes.**—The purpose of the Act respecting war crimes (c. 73) is to re-enact in statutory form the regulations that were made by Order in Council with respect to the trial of war criminals.

**Yukon.**—Two Acts have been passed respecting the Yukon—one: An Act to amend the Yukon Quartz Mining Act (c. 13); and an Act to amend the Yukon Placer Mining Act (c. 35).

## 2. ALBERTA[1]

SIXTY-THREE Acts were enacted at the Third Session of the Tenth Legislature.

**Natural Resources.**—The purpose of c. 2 is to confirm the two agreements made between the Government of Canada and the Government of Alberta set out in two Schedules. A corresponding Act had already been enacted by the Parliament of Canada.

The agreement in Schedule I provides for the settlement of differences which have arisen between the Dominion and the Province as to the effect of the Natural Resources Transfer Agreement on the ownership and control of three developed power sites on the Bwo River lying within or adjacent to the Stony Indian Reserve. The three sites known as the Horseshoe, Kananaskis and Ghost sites were developed by the Calgary Power Company Limited and are being operated under authorizations issued by the Dominion Government in the years 1909, 1912 and 1929 respectively, when they were under exclusive Dominion jurisdiction prior to the transfer of natural resources in 1930. These differences arose out of the fact that under the agreement of 1929 which became effective on October 1, 1930, transferring the Natural Resources to the Province, it was provided that all lands included in Indian Reserves within the Province should continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada. The agreement preserves all the rights of the Indians in these power sites which they obtained from the Government of Canada prior to the transfer of the Natural Resources to the Province.

The agreement in Schedule I provides that the land and water power at the two sites in which the Indian interest predominates, namely Horseshoe and Kananaskis, are to remain under Dominion jurisdiction while the Ghost site where the Provincial interest is substantial shall be deemed to have passed to the Province at the time of the transfer of the Natural Resources. The Minister of Mines and Resources will issue all three licences which are to replace the existing authorizations and will continue to administer the Horseshoe and Kananaskis developments, while the Province will be responsible for administration of the Ghost development as soon as the final licence is issued.

Under The Alberta Natural Resources Transfer Act, 1930, certain public shooting grounds and bird sanctuaries were preserved. Many of them have now dried up or are otherwise unsuitable for the purposes for which they were originally set aside. The agreement in Schedule II provides that these reservations may be cancelled by agreement between the two responsible Ministers concerned with the approval of the Governor-in-Council and the Lieutenant-Governor-in-Council.

**Health Insurance.**—C. 3 is a new Act authorizing the setting up of health insurance districts which will furnish to the residents various medical and hospital services as the same are organized from time to time. S. 3 provides for the appointment of a Director of Health Insurance and other necessary officers and clerks. S. 4 sets out the services which or one or more of which may be furnished from time to time as conditions warrant. To prevent duplication exceptions are

[1] Based on the synopsis prepared by W. S. Gray, Esq., K.C.

made in the case of medical, etc., services received under The Workmen's Compensation Act and The Tuberculosis Act. In subsection (2) of s. 4 are set out the persons qualified to receive benefits under the Act, namely, adults who have paid the prescribed annual fee and who reside in a health insurance district and have resided twelve months in the Province, also the dependants of adults and persons (such as indigents) on whose behalf the fee has been paid and for whom the municipality is responsible.

S. 5 confers on the Minister, with the approval of the Lieutenant-Governor-in-Council, various powers connected with the administration of the Act, including the appointment of an Advisory Committee, the making of agreements with municipalities, the fixing of an annual fee for adults and the age when residents become liable for the fee, the making of agreements with physicians, hospital, etc., the making of agreements with the Government of Canada as to the application of the grants which may be made by that Government to the Province for health services, the appointment of referees, etc.. to settle disputes, and various other matters of detail. In the same section, the Minister, with the approval of the Lieutenant-Governor-in-Council, is authorized to make regulations dealing with matters of procedure in making and keeping a register of adults, etc.

S. 6 deals with the establishment of health insurance districts, the preparation of a scheme by the Director, the advertising of same, and its submission to a vote of the qualified residents of the district and the procedure to be adopted in taking the vote.

S. 7 gives the qualifications of voters and the form of the ballot and directions as to voting, etc., and provides that sixty per cent. of those voting are required to vote for the scheme to ratify it. Subsection (9) of s. 7 provides that where a scheme after ratification is expanded as by services being provided additional to those in the original scheme, this expansion of the scheme shall be submitted to the voters.

S. 8 provides for a vote being taken in an area proposed to be added to a health insurance district which vote will require a sixty per cent. vote in the area to authorize its addition.

By s. 9 it is provided that where a scheme has been rejected by the voters, after the expiration of three months, any area may be detached or added and a second vote taken on the scheme.

S. 10 (1) declares who are entitled to vote at a vote taken under ss. 8 or 9 and subsection (2) provides an oath which may be administered to any person presenting himself as a voter at any vote taken under the Act.

S. 11 deals with the disestablishment of a district before and after a vote has been taken. Subsection (2) authorizes the Director with the approval of the Minister in certain circumstances to disestablish a district after it has been in operation for two years. Subsection (3) authorizes a vote after a district has been in operation for a year on the petition of twenty-five per cent. of adults residing in the district and entitled to the benefits of the Act. A sixty per cent. vote is required to disestablish the district under this subsection.

S. 13 provides for the payment by the municipality to the Minister annually of a sum obtained by multiplying the number of adults whose names appear on the list and register by the amount of the annual fee fixed by the scheme, such payment to be after the first year in quarterly instalments and if they remain unpaid after they fall due, they become debts to the Minister recoverable by action. If paid when due, the municipality is to retain three per cent. of the amount due as compensation for the service rendered. Subsection (4) of s. 13 provides that adults entitled to the benefits of the Act become indebted to the municipality in which they reside for the annual fee as fixed under the Act, which, in the case of persons on the assessment roll, may be added to the taxes, and in all cases, the amount becomes a debt due to the municipality recoverable by action.

**Industrial Corporation.**—The purpose of c. 7 is to establish a Corporation which may be described as a Crown company except that it has not the immunities of the Crown, being subject to action in the Courts in the same manner as any other corporation. (S. 3 (2).)

The powers of the Corporation are contained in s. 5, the main object being to lend money to persons or corporations carrying on or proposing to carry on any manufacturing, processing or industrial business in the Province. The other powers contained in s. 5 are for the most part incidental to the main purpose of the Corporation.

**Cultural Development.**—C. 9 enacts new legislation. S. 3 authorizes the establishment by the Lieutenant-Governor-in-Council of a number of boards for the encouragement of different aspects of the cultural life of the Province as set out generally in the section, library facilities, music, art, drama, handicrafts and physical recreation.

**Live Stock Diseases.**—C. 10 enacts new legislation and its purpose is to deal with matters which are either not covered by the Dominion Act, viz.: The Animals Contagious Diseases Act, or matters with respect to which regulations have not been made under the Dominion Act.

S. 3 authorizes the making of regulations on the various matters therein set out, including the inspection of premises, segregation of animals suffering with an infectious disease, destruction of diseased animals, etc.

**Bill of Rights.**—Part I of c. 11 is declaratory of the rights of Alberta citizens generally and in particular it is declared:—

(*a*) that every citizen of Alberta of not less than nineteen years of age and under sixty years of age is entitled to the opportunity to engage in gainful employment or, if that is not available, to a social security pension;

(*b*) that every citizen of Alberta under nineteen years of age is entitled to the necessities of life, educational benefits and medical benefits;

(*c*) that every citizen of Alberta who has reached the age of sixty years is entitled to retire and receive a pension of such amount (not less than the amount of the social security pension) authorized from time to time by the Legislature together with medical benefits;

(*d*) that every citizen of Alberta who is disabled and unable to engage in gainful employment is entitled to a social security pension together with medical benefits.

By s. 14 the Lieutenant-Governor-in-Council is empowered to classify occupations as coming within the meaning of gainful employment and to enter into agreements with the Government of Canada or of any Province which may be deemed necessary to carry out the purposes of this Act. Power is also given to the Lieutenant-Governor-in-Council to make rules and regulations governing the determination of any question which may arise under the Act and the procedure to be adopted, and in particular with respect to the qualifications of any person for high school and University education, the availability of gainful employment, the eligibility of any person for a social security pension and medical benefits, the eligibility of any person to receive a pension upon reaching the age of sixty years, and the amount of the pension to be paid.

Part II of the Act deals with the administration of credit and provides for the issuing to credit institutions of Alberta credit certificates authorizing a corresponding amount of "credit deposits," which is defined as meaning deposits of credit which have been made available to persons as claims on goods and services and in respect of which credit institutions have no corresponding reserve of currency.

S. 16 authorizes the appointment of a Board of Credit Commissioners which by s. 17 shall have authority to license all credit institutions in the Province and make regulations as to licence fees, etc. Any credit institution which carries on operations without a licence is made liable to penalties and provision is also made

in such cases for the Board, with the approval of the Lieutenant-Governor-in-Council, entering the premises of a credit institution and assuming control of its business, provided that this does not interfere with any operations which the institution is authorized to perform under the provisions of The Bank Act nor with the deposits of customers or the rights of the customer to deal with his deposits.

By s. 18 the Board is directed to establish and maintain a proper accounting of the estimated capitalized productive resources of the Province expressed in monetary terms, being the estimated capitalized valuation of its credit to be known as the Capital Assets Account of Alberta which shall include:—

(*a*) the natural resources of the Province both developed and undeveloped;
(*b*) buildings, plant, public utilities, etc.;
(*c*) the capitalized productive capacity of the people.

By s. 19 the Board is directed to establish an account to be known as the Consolidated Credit Adjustment Fund to which Fund shall be issued by the Board against the Capital Assets Account of Alberta credit deposits in such amounts as may from time to time be required as a reserve for providing an adequate volume of credit deposits to finance the production and distribution of goods and services in the Province and maintaining a balance between the aggregate purchasing power of the people of the Province and the estimated collective prices of goods for sale in the Province.

By s. 20 it is provided that from the Consolidated Credit Adjustment Fund the Board shall, with the approval of the Lieutenant-Governor-in-Council, transfer to the General Revenue Account such amounts of credit deposits as are necessary for the payment of social security pensions, educational benefits and medical benefits, for the reduction of taxation, for grants to public authorities, and for the reduction of retail prices by means of subsidies. By subsection (2) of the same section the Board is authorized to issue to licensed credit institutions Alberta Credit Certificates in order to enable them to issue credit deposits to customers over and above the deposits against which a reserve of currency is held.

By s. 22 it is provided that if the aggregate purchasing power of the people at any time exceeds the estimated collective prices of the goods for sale, the Board shall report this condition to the Lieutenant-Governor-in-Council who is required to take steps to retire such excess purchasing power by one or more of the steps set out in the section, including the withdrawal of Alberta Credit Certificates in whole or in part from licensed credit institutions on a *pari passu* basis.

S. 23 provides for reports by the Board to the Minister at least once every three months upon the extent to and the manner in which the credit of the Province is being utilized, whether it is adequate, the extent to which the aggregate purchasing power of the people is adequate to purchase the total goods and services for sale in the Province, and as to any action required to be taken for the purpose of balancing purchasing power and the collective prices of goods and services for sale.

S. 24 deals with the manner in which credit institutions shall keep and operate the accounts of customers and provides that the Board shall have access to the books, records and accounts. It is further provided by the said section that the Board may require a licensed credit institution to hold Alberta Credit Certificates against credit deposits of customers, not being deposits against which a reserve of currency is held.

S. 25 contains a general power to the Board to make regulations, subject to the approval of the Lieutenant-Governor-in-Council, necessary for the administration of the Act.

S. 26 provides penalties for credit institutions and others found guilty of violating any of the provisions of Part II of the Act, which penalty may include the cancellation of the licence of a credit institution.

S. 27 provides for the payment of taxes, fees, etc., by the transfer of credit deposits.

This Act shall come into force on Proclamation, and no such proclamation shall be made until the question of the validity of the Act has been referred to the Supreme Court of Alberta, and it is certified upon any such reference that the Act is valid and if no appeal is pending, until the time for giving notice of appeal has elapsed.

**Savings Certificates.**—S. 1 of c. 25 repeals subsection (1) of s. 2 of the Act, and substitutes a new subsection which enables the Provincial Treasurer to issue non-negotiable savings certificates or transferable savings certificates as the case may be. Under the old subsection, he could only issue non-negotiable savings certificates. The purpose of this amendment is also to enable the holders of transferable savings certificates to transfer them to a new holder.

**Succession Duty.**—S. 7 of the Succession Duty Act which is amended by s. 1 of c. 27 enumerates the exemptions which are allowed under the Act. Paragraph (*d*) as it formerly stood, exempted gifts, etc., to the University of Alberta, and the proposed new paragraph (*d*) extends this exemption to gifts or bequests to school districts and school divisions in the Province.

The new s. 39*a* has been added to prevent the depletion of assets of an estate by a succession of deaths which are very close together, and enables the Minister to relieve the estate in these cases by a reduction of the duties on the second death by the amount set out in this section.

**Noxious Weeds.**—S. 1 of c. 34 introduces a new s. 24*a* dealing with seed cleaners and prohibits persons other than farmers processing their own seed grain from operating or controlling seed cleaners without a permit from the Field Crops Commissioner, who is authorized to cancel or suspend the permit where grain is not being properly cleaned or weed seeds are being improperly dealt with.

**Dower.**—S. 8 of the Dower Act now provides that where a husband and wife are living apart or where the wife has not since her marriage lived in the Province, or where her whereabouts are unknown or where she is a mentally incompetent person or person of unsound mind, a judge of the Supreme Court may by order dispense with the consent of the wife to a disposition of the homestead, that is, the home quarter section or the residence in a city, town or village, if in the opinion of the judge it seems fair and reasonable to do so upon such terms and conditions as to payment into Court or otherwise as the judge thinks proper. In a recent case in the Appellate Division of the Supreme Court, the Court in effect held that in all such cases the judge making the order must impose conditions of the nature above stated. It is considered that a judge should have authority in a proper case to make an unconditional order dispensing with the consent of the wife and the purpose of c. 53 is to give judges such a discretion.

**Trustees.**—S. 47 of the Trustee Act (c. 55) provides for the distribution by the executor or administrator of the assets of an estate after secured claims are paid *pro rata* among the creditors where there are not sufficient assets to pay the claims in full. Sometimes an executor, through a misapprehension as to the value of the assets, pays some creditors in full where the assets do not warrant it and it has been held by the Court of some of the Provinces that in such a case the executor or administrator must pay all creditors in full. The purpose of the new subsection added to s. 47 is to protect an executor or administrator in such cases. A similar amendment was made to The Trustee Act of Ontario in 1944.

**Setting of Poison.**—S. 1 of c. 63 amends subsection (1) of s. 3 of the Act, which subsection authorizes any person to set out poison on his own premises in the manner prescribed in the subsection. The amendment prohibits the setting out of poison for the purpose of killing big game, fur-bearing animals or game birds, which makes this Act consistent with The Game Act in this respect.

**Solemnization of Marriage.**—C. 66 adds a proviso to subsection (3) of s. 14

of the Solemnization of Marriage Act. That subsection requires the production of a doctor's certificate to the effect that he has taken a specimen of blood for a syphilis test from the applicant for the licence, etc. The amendment authorizes the acceptance of the certificate of a Provincial District Nurse in lieu of the doctor's certificate in cases where the applicant lives in a remote district far from a physician.

## 3. BRITISH COLUMBIA[1]

**Annual Holidays.**—No. 4 provides for annual holidays with pay for employees.

**Beef Cattle Producers.**—No. 7 provides for the granting of assistance to the beef cattle producers in the Province.

**Stock-Brands.**—No. 8 requires stock-dealers to be licensed and amends the provisions relating to inspection of stock before shipment. It also authorizes regulations governing the slaughtering of horses.

**Change of Name.**—No. 12 provides for change of surname of married women where Court grants decree for dissolution or nullity of marriage.

**Constitution.**—No. 15 adds a new portfolio in the executive council, namely, that of Health and Welfare, and increases the sessional allowance of members of the Legislature to $3,000.

**Consumer Credit.**—No. 16 authorizes the Lieutenant-Governor-in-Council to make regulations governing consumer credit in case Dominion vacates the field.

**Municipal Elections.**—No. 24 provides that every elected candidate shall take an oath of allegiance as set out in the Act.

**Fisheries.**—No. 28 provides for the licensing of persons engaged in harvesting kelp, and persons processing kelp or other aquatic plants in the Province.

**Game.**—No. 30 provides for the regulations of non-resident hunters in any section of the Province, and the sale or possession of game. Amendments have been made to cover the control and licensing of non-resident outfitters, the licence fee for non-residents, and the sale or possession of trout caught in the Province.

**Health.**—The chief amendments enacted by No. 32 arise from the establishment of the Portfolio of Minister of Health and Welfare and the abolition of the Provincial Board of Health.

**Hours of Work.**—No. 34 provides for the limitation of hours of work of an employee in any industrial undertaking.

**Land Registry.**—No. 36 contains amendments relating to the registration of easements in favour of the Crown, municipalities and certain public service corporations.

**Legal Professions.**—No. 38 contains amendments necessitated by the establishment of a Faculty of Law at the University of British Columbia.

**Real Estate Agents' Licensing.**—Persons dealing in business ventures by No. 40 come within the definition of real-estate agents and as such will have to be licensed and to furnish a bond.

**Maintenance Orders.**—No. 48 is an Act to facilitate the enforcement in British Columbia of Maintenance Orders made in England and Northern Ireland and other parts of His Majesty's Dominions and Protectorates, and vice versa.

**Milk.**—No. 45 gives a municipality other than municipalities to which the Municipal Act applies, power to make by-laws prohibiting the sale of unpasteurized milk.

No. 61 establishes a separate Board known as the " Milk Board " which shall have jurisdiction over milk and shall exercise with respect to milk all the powers conferred on the Public Utilities Commission.

**Coal Mines.**—No. 46 sets out sanitary arrangements required for persons employed in a coal mine.

[1] Based on material contributed by J. Pitcairn Hogg, Esq., K.C.

**Notaries.**—No. 53 provides that the Commission appointing a Notary Public in unorganized territory may define the area within which the applicant shall be authorized to practise.

**Petroleum and Natural-Gas.**—Crown petroleum and natural-gas in certain described lands are constituted Crown reserves by No. 57 and may be disposed of by the Lieutenant-Governor-in-Council at any time by public tender. Other minor changes are also made.

**Physiotherapists and Massage Practitioners.**—No. 59 incorporates the "Association of Physiotherapists and Massage Practitioners of British Columbia" and provides for the registration, examination, fees, etc., of physiotherapists and massage practitioners.

**Slum Clearance.**—No. 66 provides for giving assistance to municipalities in the clearance of slum areas.

**Gasoline Tax.**—No. 70 provides for the colouring and taxation of gasoline purchased by farmers, fishermen, and other non-highway users. The tax is lower than that paid by automobile owners.

**Wills.**—No. 79 abolishes the fee payable by a testator upon filing with the Director of Vital Statistics notification of the place where his Will is kept.

## 4. MANITOBA

[*Contributed by* J. S. Rutherford, Esq., *Legislative Counsel.*]

**Warehouse Receipts.**—C. 69 is an Act recommended by the Conference of Commissioners on Uniformity of Legislation in Canada, subject to an amendment providing that it does not apply to a railway company or to an express company within the legislative authority of the Parliament of Canada or to the manager or operator of a grain elevator as defined in The Canada Grain Act. The purpose of the Act is to provide a code of law with respect to the subject of warehouse receipts.

**Defamation.**—C. 11 was recommended by the Conference of Commissioners on Uniformity of Legislation in Canada. It substitutes one action of defamation for the former actions of libel and slander and makes specific provision with respect to radio broadcasting.

S. 19 of the Act concerning libels against races or religious creeds was not in the Act recommended by the Uniformity Commissioners. It is taken from s. 14 of the former Libel Act of Manitoba with certain amendments.

**Judgments.**—Under c. 27, in future assignments of judgments are to be registered in the court in which judgment was recovered and not in the land titles office. The certificate of judgment obtained from the court and each renewal thereof will show any assignments that have been registered in the court. Therefore when the certificate of judgment showing the assignments is registered in the land titles office there will be a record there of such assignments.

**Real Property.**—C. 51 permits the district registrar to decide priorities with regard to liens in favour of the Crown or municipalities and registered certificates of judgment. The amendment also provides that the address that must be given on the registration of certain instruments by the person who registers the same need not necessarily be an address in the Province.

Another provision allows the Crown or a municipality holding liens against property to execute in favour of the mortgagee a postponement of liens.

Substitutional service instead of personal service is authorized by c. 52 with respect to applications to bring land under The Real Property Act in cases where the value of the land does not exceed one thousand dollars.

C. 53 provides authority for the registration of caveats based on certain liens respecting agricultural equipment and farm electric systems taken by banks under section 88 and section 89 of The Bank Act.

**Wills.**—C. 70 repeals s. 32 of the Wills Act which granted certain rights to posthumous children.

**Lien Notes.**—The first amendment in c. 31 provides that the seller of goods under a lien note who retakes possession of them must retain them for twenty days before selling the same, and that in the meantime the purchaser can redeem the same by payment of the amount in arrear. The provision does not apply to sales under The Farm Implement Act.

Certain amendments were made with regard to the furnishing of information by bailors and respecting the rights that pass on assignment of a lien note.

**Manitoba Insurance.**—C. 24 provides that a person contravenes the terms of s. 2 of the Statutory Conditions of an automobile insurance policy only if he is not at the time qualified to drive and has never been authorized by law to drive. The amendments also provide that a person may attach certain types of trailer to a motor vehicle without obtaining a special endorsement on the policy.

Another amendment covers the case of automobile, garage, repair shop, and service station policies and allows such risks to be covered by special endorsement.

C. 25 makes it clear that in construing any contract of accident and sickness insurance, if the insured has also made a contract with the Manitoba Hospital Service Association or the Manitoba Medical Service, payments made under the latter contracts are to be deemed to be payments made by the subscriber himself so that he will be able to recover under the contract of accident and sickness insurance, unless otherwise specifically provided therein.

**Testator's Family Maintenance.**—C. 64 was recommended by the Conference of Commissioners on Uniformity of Legislation. It permits applications to be made to the court to vary the Will of a testator in so far as the court deems necessary in order to provide for the adequate maintenance and support for the testator's dependants, which term means a wife, husband, or child.

**Evidence.**—C. 13 reverses the rule of evidence enunciated by the House of Lords in the case of *Russell* v. *Russell* which prohibits in certain cases the giving of evidence by a husband or wife that he or she did not have sexual intercourse with the other party during the marriage. The amendment is recommended by the Conference of Commissioners on Uniformity of Legislation. The amendment was made to affect litigation pending at the time of its enactment.

**Education.**—C. 12 provides for certain changes in the Department of Education, the chief of which is for the appointment of a deputy Minister and also for the establishment of a High School Examination Board. Certain grants are increased.

C. 47 makes a number of amendments to The Public Schools Act, chiefly of an administrative character.

The purpose of the amendments in The School Attendance Act, c. 55, is to ensure that attendance at school is compulsory on both blind and deaf children unless excused for some other cause.

**Civil Service.**—Certain amendments are made by c. 4 with regard to the priorities to be enjoyed by ex-Servicemen in respect of employment in the provincial civil service.

**Blind Persons.**—The purpose of the amendments in c. 2 is to transfer the provisions for the maintenance and education of deaf persons to the same Act that now deals with the maintenance and education of blind persons. The Manitoba School for the Deaf Act is repealed.

**Limitation of Actions.**—C. 32 incorporates a number of amendments recommended by the Conference of Commissioners on Uniformity of Legislation. In particular, it makes specific provision for the period of limitation with respect to certain actions under agreements for sale of land and conditional sale agreements of goods. The period of limitation applicable to judgment debts is also dealt with and also the period of limitation with respect to claims against trustees and as to lands held upon trust. Provision is also inserted in the Act respecting the actual

extinguishment of a title of the owner of a chattel who is out of possession for the statutory period. This follows the provisions already in the Act with respect to the actual extinguishment of the title of an owner of land.

**Debt Adjustment.**—The amendments in c. 10 allow a tax sale purchaser of land which is or may be subject to the provisions of the Act respecting persons engaged on war service to file an application in order to protect his rights. If the person protected actually redeems the land, however, he is entitled to do so without payment of costs. The period of protection for persons who were engaged on war service is extended to, and terminates at, the thirty-first day of December, 1948. The protection of the Act is also extended to persons who were engaged in war service in certain of the auxiliary organizations specified in the Act.

**The Farm Implement.**—The definitions of " implement," " large implement " and " small implement " are revised by c. 15; also the definition of " vendor." It is provided that the Act shall not apply to sales made to persons carrying on an implement business for use in such business or for resale, or to sales by farmers by auction sale as well as in the ordinary course of their farming operations. The provisions of s. 10 with respect to the filing of lists of prices, etc., are revised.

Where the vendor of an implement is not the maker the person or company who sold the implement to the vendor is made liable under the various statutory warranties. This is in addition to the liability of the vendor.

**Legitimation.**—C. 30 deals with situations that might arise where a marriage is contracted by virtue of s. 18A of The Marriage Act. It provides for the legitimacy of children born as the result of such a marriage.

**Maintenance Orders.**—C. 35 is an important statute providing a procedure under which maintenance orders made in England, Northern Ireland, and in certain other parts of His Majesty's dominions and vice versa may be enforced in Manitoba.

**Credit Union Societies.**—C. 9 removes the provisions respecting credit union societies from The Companies Act and sets up a special Act for the incorporation and government of credit union societies.

**Venereal Disease.**—The amendments to the Marriage Act in c. 36 provide that a pre-marital medical examination for syphilis shall be required before a marriage can legally be solemnized subject to certain exceptions. Certain other collateral provisions are contained in the amendments.

C. 46 authorizes the cancellation of licences of various kinds issued to premises which, or the operation of which, are in the opinion of the Minister contributing to the spread of venereal disease.

**Predator Control.**—C. 43 revises the provisions concerning payment of bounties on predators, particularly in respect of timber wolves and their pups. The bounty in respect of certain other predators is increased.

**Highway Traffic.**—The principal amendment in c. 21 is that which provides for the issue of financial responsibility cards in respect of garage and sales agency policies of automobile insurance.

**Historic Sites Preservation.**—C. 22 provides for the preservation and protection of historic sites and ethnological and anthropological objects.

**Housing.**—C. 23 enables municipalities to take advantage of certain of the provisions of the two Dominion National Housing Acts.

**The Manitoba Power Commission.**—Certain changes are made by c. 41 in the financial provisions respecting the Power Commission and the powers of the commission are extended. In particular, within its own territory, it is to be the only authority that grants licences to electricians and does inspection work.

**Fair Wage** —C. 14 changes the definition of " industry " to include all business, trades, etc., except agriculture.

## 5. NEW BRUNSWICK

ONE HUNDRED AND THIRTY-FOUR Acts, of which seventy were local and private, were passed in the Session. Some of the former would generally be classed with the latter as for example c. 61, closing Chancery Lane in the city of Fredericton as a public thoroughfare.

**Finance.**—The first eleven Acts dealt with the provision of finance, including the principal appropriate measure. In addition they covered the repair of roads and bridges (c. 2), the construction of permanent roads (c. 5), and bridges (c. 4), the construction of hard surface roads (c. 6), funds for machinery and equipment for the repair and maintenance of highways and for snow removal (c. 7), for the construction of a building for the Department of Lands and Mines (c. 9), for improvements at the University of New Brunswick (c. 9), for certain expenditures at the Provincial Hospital (c. 10) and for the construction and equipment of new buildings for the care and treatment of the mentally ill.

**Evidence.**—The Evidence Act is amended by c. 35 so as to allow the admission in evidence of photographic prints in accordance with the recommendations of the Commissioners on Uniform State Laws.

**Co-operative Associations.**—The law relating to the constitution and powers of co-operative associations is now contained in c. 50 which repeals the previous law on the subject.

**Factories.**—The law for the protection of persons employed in factories is now contained in c. 51. The extent to which details are embodied in legislation is illustrated by the section dealing with the provision of " proper toilet rooms " in factories which " shall be supplied with a sufficient supply of toilet paper."

**Adoption.**—Provision is made for the adoption of children by c. 57 under the supervision of the Child Welfare Officer of the Province.

**Engineers.**—Previous legislation is repealed by c. 59 which now contains the requirements respecting stationary engineers, stationary boilermen, steam power plants, boiler plants, boilers and pressure vessels.

**Fisheries.**—The purpose of c. 60 is to provide for loans to fishermen and to create a Fishermen's Loan Board.

**Warble Flies.**—Upon the petition of at least 75 per cent. of the number of cattle owners in area the Minister of Agriculture by c. 64 may establish a Warble Fly Free Area.

## 6. NOVA SCOTIA

ONE HUNDRED AND FIFTEEN Acts, of which 55 were Public General, were passed in the Session.

**Public Service.**—While respecting previous legislation, c. 2 conveniently contains in one Act the functions and duties of the different departments engaged in the administration of the Province.

**Vital Statistics.**—The law dealing with the collection of vital statistics and the duties of the Registrar in charge are consolidated in c. 3 which respects previous legislation.

**Marriage.**—The solemnization of marriage is the subject of c. 4 which is also a consolidating measure.

**Hospitals.**—The work of consolidation is continued in c. 5, which deals with the financial assistance to be given to hospitals by municipalities and related matters.

**Small Trees.**—The conservation of small trees, which are defined as any hemlock, pine or spruce tree which, measured inside the bark is less than ten inches in diameter at a point not less than one foot or more than two feet from the ground, is the subject of c. 6 which consolidates and repeals previous legislation.

**Veterinary Assistance.**—The work of the Veterinary Assistance Board is authorized in c. 7 which now contains the law on the subject by repealing previous measures.

**Maternity Homes.**—Accommodation with or without charge containing two or more beds for pregnant women or for three months immediately succeeding the birth of a child is the subject of c. 8, which repeals previous legislation and now contains the law on the subject.

**Research Foundation.**—By c. 9 the Research Foundation is constituted to promote research to improve the conditions of agriculture, fisheries, lumbering and mining or for the economic betterment, welfare and progress of the Province, to improve the technical processes and methods used in the industries and to discover methods which may promote prices, extension and development into the utilization of waste products and to investigate the quality of the materials used in the industries.

**Natural Products.**—The Nova Scotia Marketing Board is constituted by c. 10, with power to settle disputes between producers, distributors or transporters, investigate the costs of each and trade practices or other matters bearing upon marketing of the products and to establish price negotiating agencies, besides general powers to carry out the duties of the Board.

**Fisheries.**—Seven Acts are repealed by c. 11 and re-enacted with amendments to provide for the operation of canneries and fish plants.

**Harness Racing.**—A commission is established by c. 12 to regulate harness racing, which is defined to be racing in which the horses participating are harnessed to a sulky, carriage or similar vehicle, and does not include any form of racing in which the horses participating are mounted by jockey.

**Labour.**—Residence in the Province for at least a year is necessary by No. 13 unless the person so to be employed produces a certificate that there is no unemployed person in the area capable of doing the work.

**Official Reporters.**—The Attorney-General by c. 17 may appoint suitable persons to attend as official reporters of proceedings before magistrates and coroners.

**Evidence.**—C. 28 is the Act recommended by the Commissioners on Uniformity of Law to enable a husband or wife to testify regarding non-access.

**Coal Miners.**—The law in reference to the certification of miners is strengthened by No. 32 which also provides for new methods of working.

**Legal Profession.**—Various amendments in the constitution and procedure of the Nova Scotia Barristers' Society are made by c. 44.

**Maintenance.**—C. 47 is the Act required for the enforcement of maintenance orders to reciprocate with procedure in the United Kingdom.

**Public Utilities.**—By c. 49 a public utility is defined to mean any person who owns, manages or controls a tramway, trolley bus or motor vehicle for the conveyance of passengers between points in a tour, any plant or equipment for the conveyance of telephone messages, or plant for the supply and transmission of electric energy.

## 7. ONTARIO

[*Contributed by* K. G. Morden, Esq., K.C.]

Acts passed 146; Public 111; Private 35.

**Companies.**—The Companies Act is amended by a provision (c. 10) that no shareholder or creditor or agent shall make or procure a list of shareholders unless he files with the company an affidavit that the list is required only for purposes connected with the company. Such purposes are deemed to include any effort to influence shareholders at a meeting or the acquisition or offering of shares for the purpose of acquiring control or effecting a re-organization. It is an offence

for anyone other than the company or its agent to use such a list for the purpose of sending advertising or other printed material relating to securities of other companies, or for purposes not connected with the company.

**Flood and Water Pollution Prevention.**—The Conservation Authorities Act (c. 11) provides for the establishment of conservation authorities for watersheds which, when established, shall be bodies corporate. The members of the authorities will be appointed by the municipalities situate within the watershed and when the Lieutenant-Governor-in-Council makes a grant, he may appoint a member. The objects of the authorities are to undertake and effect schemes whereby the natural resources of the watershed may be conserved, restored and developed and the waters controlled in order to prevent floods and pollution. They have power, *inter alia,* to erect works, dams, reservoirs, to purchase, acquire and expropriate land, employ labour, purchase materials, cause research to be done and to determine the proportion of total benefit afforded to the participating municipalities. Upon the application of any dissatisfied municipality, the Ontario Municipal Board has the power to review, confirm or vary the apportionment of cost and its decision is final and conclusive.

**Day Nurseries.**—Councils of local municipalities may (c. 17) provide by by-law for the establishment of day nurseries for the care and feeding of young children. The by-law may provide for the establishment directly by the municipality or by any named organization. If the day nursery is conducted in accordance with regulations made by the Lieutenant-Governor-in-Council, the Province will contribute one half the cost of operation and maintenance.

**Evidence.**—The Evidence Act is amended (by c. 25) by adding s. 5A which provides that " husband or wife may in any action, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage." This amendment abrogates the Rule in *Russell* v. *Russell* and was adopted by the Conference of Commissioners on Uniformity of Legislation in August, 1945, as a result of a report of the Ontario Commissioners. (See 23 *Canadian Bar Review,* p. 536.)

**Liquor.**—The Liquor Licence Act (c. 47) provides for the licensing of hotels, inns, taverns, clubs, military messes, railway cars and steamships for the sale of liquor (spirits, wine, beer) and restaurants for the sale of beer and wine with meals and public houses for the sale of beer. Hotels, inns and taverns situated in municipalities with less than 50,000 population will not be licensed for the sale of spirits until a three-fifths affirmative vote has been taken under the local option provisions of the Act. No licences will be granted in areas in which the Canada Temperance Act is in force (*Attorney-General for Ontario* v. *Canada Temperance Federation* (1946) A.C. 193) or in which by-laws prohibiting the sale of liquor have been passed under this Act or former liquor control Acts. The Act provides that " Where any person or his servant or agent sells liquor to or for a person whose condition is such that the consumption of liquor would apparently intoxicate him or increase his intoxication so that he would be in danger of causing injury to his person or injury or damage to the person or property of others, if the person to or for whom the liquor is sold while so intoxicated: (*a*) commits suicide or meets death by accident an action under The Fatal Accidents Act will lie against the person who or whose servant or agent sold the liquor; or (*b*) causes injury or damage to the person or property of another person, such other person shall be entitled to recover an amount to compensate him for his injury or damage from the person who or whose servant or agent sold the liquor." Before this Act was passed spirits could be purchased only at Government stores and consumed only in the purchaser's residence.

**Marine Insurance.**—The Marine Insurance Act, 1946 (c. 51) is a codification of common law principles applicable to marine insurance and is identical with the

Marine Insurance Act, 1906 (U.K., 6 Edw. VII C. 41). Similar Acts have been passed in British Columbia in 1925 (*J.C.L.* Vol. IX, p. 59), Nova Scotia in 1941 (*J.C.L.* Vol. XXV, p. 72) and New Brunswick in 1943 (*J.C.L.* Vol. XXVIII, p. 59).

**Municipal Planning and Development.**—The Planning Act, 1946 (c. 71) replaces and extends the Planning and Development Act (R.S.O., 1937, c. 270). Where a municipality wishes to have an " official plan," i.e. a plan consisting of maps and explanatory texts showing a programme of future development of an area including regulation of the use of land and buildings, etc., it shall first apply to the Minister of Planning and Development to designate a planning area. When this is done the municipality shall appoint a planning board, one of whom shall be a member of the municipal council. The board shall, *inter alia,* prepare a plan for the planning area which when adopted by the council shall be submitted to the Minister. When approved by the Minister it becomes the official plan. No public work which does not conform with the official plan shall be undertaken except with the approval of a two-thirds affirmative vote of all the members of municipal council, and any contravention of the official plan may be restrained at the instance of the planning board or a ratepayer. Municipalities are empowered to acquire, hold, lease or sell lands for the purpose of developing any feature of the official plan. Provision is made for the case of planning areas covering more than one municipality. The Act provides also for the designation by municipal councils of urban development areas. No land within such an area shall be divided for sale unless the land is shown in a registered plan of subdivision (under the appropriate land registry system). Every person desiring to subdivide land for sale shall submit a draft plan to the Minister for approval and to the municipal council or if within a planning area to the planning board. If the Minister approves, the plan may be registered in the land registry.

**Police.**—The Police Act, 1946 (c. 72) repeals the Constables Act and amendments and many sections of the Municipal Act and amendments and prescribes the duties of municipalities for policing and maintenance of law and order and duties of the Ontario Provincial Police Force. Every city and town has full responsibility for their own police services; villages and townships which have a density of population and real property assessment sufficient to warrant the maintenance of a police force and which have been so designated by the Lieutenant-Governor-in-Council have the same responsibility. The Provincial Police are responsible for policing all other parts of Ontario and in addition shall patrol and enforce all laws on the Provincial Highways, and aid local police at the request of the local Crown Attorney, enforce laws designated by the Attorney-General and maintain a criminal investigation branch. The Act provides for the organization, government, appointment, powers, duties, remuneration and discipline of municipal police forces and Ontario Provincial Police Force. The Provincial Police shall not be charged with any duties under or in connection with a municipal by-law except where the Commissioner of the Provincial Force has entered into an agreement with the municipal council for the policing of the municipality.

**Warehouse Receipts.**—The Warehouse Receipts Act, 1946 (c. 107), is enacted in the form recommended by the Conference of Commissioners on Uniformity of Legislation. " Warehouse receipts " means an acknowledgment in writing by a warehouseman of the receipt for storage of goods not his own. The Act prescribes the contents of receipts, negotiable and non-negotiable, duplicate receipts and the effect of the Act makes negotiable receipts documents of title, a status they did not enjoy at common law. The Act also provides for the standard of care to be exercised by the warehouseman, his right to mingle fungible goods of different owners, the disposal of perishable and hazardous goods and other matters which lie outside the title of the Act.

## 8. PRINCE EDWARD ISLAND

[*Contributed by* W. E. Bentley, Esq., K.C.]

Of the fifty-three Acts passed by the Legislature, thirty-five were public, eighteen were private.

**Children.**—The Children's Act is amended by c. 5 containing a requirement that in cases where a proposed adopting parent is a non-resident of the Province, or when the child which is the subject of a petition for adoption, was born outside the Province, no order for adoption may be made without first obtaining the consent of the Attorney-General.

**Pre-Marital Health Examination.**—By c. 23 every person who intends marriage in the Province must before the intended marriage present himself to a physician and procure a certificate of fitness and submit to blood tests in order to determine any infection with syphilis. The certificate of the physician must be procured before the licence shall be issued or banns of marriage be published.

**Estates of Intestates.**—By c. 24 where any person dies in Prince Edward Island intestate, or intestate as to some part of his estate, and without leaving any known relative living within the Province or any relative who can be communicated with living elsewhere, the Court of Probate may upon application and without previous advertisement, grant administration general or limited, to the Attorney-General for the use and benefit of His Majesty, or of such persons as may ultimately appear to be entitled thereto.

**Divorce.**—By a statute passed in 1835, at which time the jurisdiction of the Legislature was plenary, a Court of Divorce was constituted, consisting of the Lieutenant-Governor and His Majesty's Council. Since Confederation (1867) when jurisdiction over Divorce was by the British North America Act, 1867, allocated to the Parliament of Canada, the Island Court of Divorce has not exercised jurisdiction. In May, 1946, the Court met for the first time since 1867, with the Chief Justice presiding in place of the Lieutenant-Governor as authorized under the Act of 1835. The grounds for divorce are: Frigidity or impotency, adultery and consanguinity within the degrees prohibited by Imperial Act 32 Henry the Eighth. The husband must be domiciled within the Province at the time the action is brought.

**Evidence.**—To meet the difficulty resulting from the decision in *Russell* v. *Russell* [1924] A.C. 687, c. 11 enacts that a husband or wife may give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time, or within any period of time before or during the marriage.

**Venereal Disease.**—Prevention is dealt with by c. 34, which requires a person affected with or suspecting himself to be affected with venereal disease to present himself to a medical practitioner for examination, and to undergo medical treatment if found affected. The Chief Health Officer is also empowered to require suspected persons to submit to examination and undergo treatment and may authorize entering the premises of such persons for inquiry and examination. Regulations by Order in Council are authorized for the detection and control and preventing the spread of such disease.

## 9. QUEBEC

[*Contributed by* The Hon. Mr. Justice Fabre-Surveyer.]

Fifty-five Public and sixty-five Private Acts were passed in the Session.

**Health.**—Since preventive medicine is a great factor in safeguarding health, c. 5 enables the Cabinet on the recommendation of the Minister of Health to enter into an agreement with Montreal University to establish and maintain a school for training technicians in public health and preventive medicine. The Act auth-

orizes the payment of a yearly sum of Forty Thousand Dollars from the consolidated revenue fund beginning April 1, 1946, for a period of 20 years.

**Forestry.**—C. 6 authorizes a subsidy to Laval University for a forestry school, and empowers the Cabinet to enter into an agreement with Laval University of Quebec for the purpose.

**Courts of Justice.**—C. 12, amending in various ways the Courts of Justice Act, 1941, Revised Statutes, c. 15, as amended by 1943 Geo. VI, c. 11, and 1945 Geo. VI, c. 18, enacts that Judges of the Sessions, Judges of the Juvenile Delinquents' Courts of Montreal and Quebec as well as District Magistrates are chosen from advocates with at least ten years' practice, whereas formerly five years' practice sufficed. The maximum number of Judges of the Sessions is twenty-five at any time, and of District Magistrates thirty-five.

**Gaming.**—C. 19 prohibits any person from claiming rights of property or possession in gaming apparatus. It defines gaming apparatus as an automatic or slot machine whose operation depends on chance or which is used otherwise than for selling merchandise or services. All gaming apparatus is subject to seizure with or without a warrant, and the provisions of the Summary Convictions Act, 1941, Revised Statutes, c. 29, apply, except where incompatible, to the execution of the warrants, to the summoning of witnesses, and generally to the procedure of prosecutions under the Act.

**Progress of Education.**—Since many school corporations have no sufficient moneys for the needs of education, under c. 21, it is deemed just that the natural resources contribute reasonably to the cost of public education; therefore, an Education Fund is created by levies from the holders of timber limits, the owners of wooded territories (settlers and farms are excepted), the holders of hydraulic powers of a public domain, and owners of hydraulic powers; the Quebec Hydro Electric Commission is also required to pay Two Million, Eight Thousand Dollars out of its revenues towards the Education Fund.

The Act provides for reorganization of school finances where necessary, and for an annual salary of at least Six Hundred Dollars to each teacher in all rural municipalities. The jurisdiction of the Montreal Catholic School Commission is extended to cover the Catholic School Municipality of Montreal East, and specified loans are authorized, etc., by the Act which came into force April 17, 1946.

**Social Welfare and Youth.**—C. 22 constitutes a new department called the Department of Social Welfare and of Youth, under the direction of the Minister of Social Welfare and of Youth. The Minister is authorized to organize a farm to receive juvenile delinquents.

**Forest Industry.**—Considering that forest industry is a fundamental one, c. 25 provides for the exploitation of certain forest lands by authorizing renewable cutting licences on Crown lands to nine enumerated companies for a price not below five hundred dollars per square mile and for specified areas. Moreover, the Act requires that all wood cut on timber limits granted under its authority be worked in the Province and forbids its export in a rough state unless with permission of the Cabinet; the Act also delineates the powers of the Gaspesian Sulphite Company Limited to build, maintain and use roads, telephone or electric transmission lines upon vacant Crown lands in order to help exploit timber limits in the Gaspesian Area. The Cabinet is also empowered on the recommendation of the Minister of Lands and Forests and of Game and Fisheries to conclude agreements to dam rivers and streams, etc.

**Hydro-Electric Commission.**—By c. 26, amending in various ways the Quebec Hydro-Electric Commission Act, 1941, Revised Statutes c. 98A, as amended by 1944 Geo. VI, c. 22, and by 1945 Geo. VI, c. 30, the Commission is allowed, notwithstanding any law to the contrary, to make agreements with municipal corporations, etc., for the payment of fixed sums of money instead of assessments or taxes. The Act states that the agreements and decisions relating to this purpose

between January 1, 1945, and April 1, 1946, are valid and retroactive to January 1, 1945; all agreements made after April 1, 1946, come in force only on approval of the Cabinet.

**Hypothecary Loans.**—As a measure to aid in solving post-war economic and social problems, c. 28 enables the Quebec Hydro-Electric Commission and the Beauharnois Light, Heat and Power Company to encourage their employees to build or acquire dwelling houses, to make improvements and pay off mortgages encumbering their homes; accordingly, the Quebec Hydro-Electric Commission may lend up to One Million Dollars to their employees and the Beauharnois Light, Heat and Power Company up to One Hundred Thousand Dollars for this purpose, the loans bearing interest at the rate of 3 per cent. per annum and repayable in 20 years or beforehand as the borrower wishes. In case of sickness, the creditor may allow delays. Loans are secured, moreover, by first mortgage on the dwellings and are personal to the employees.

Under certain specified conditions, loans are immediately repayable; if the borrower ceases to work for the creditor, etc. The Act also provides the necessary procedure for the creditor to realize upon security, and came into force March 28, 1946.

**Electricity.**—C. 29 provides for the construction of a storage dam at Lake Dozois by the Hydro-Electric Commission as mandatory and agent of the Crown.

**Drainage.**—For the purpose of enlarging arable domain to aid colonization and agriculture, c. 31 permits the Cabinet to authorize the Minister of Agriculture to enter into an agreement with the Federal Government to carry out a programme of drainage work in the Province, and authorizes the Provincial Government to spend out of the consolidated revenue fund an amount up to Five Million Dollars. The Minister of Agriculture is charged with the carrying out of the Act.

**Farm Credit Bureau.**—C. 32 enables the Farm Credit Bureau to lend an additional Five Million Dollars to farmers, the loans bearing interest at two and a half per cent. per annum.

**Collective Agreement.**—C. 38 amending the Collective Agreement Act (1941 Revised Statutes, c. 163, as amended by 1943 Geo. VI, c. 29) enacts that the decree also renders obligatory provisions of agreements between employers and employees respecting vacations with pay which formerly it did not cover. The Act also enables the committee by resolution to grant subsidies to any apprenticeship commission constituted under the Apprenticeship Assistance Act, 1945, Geo. VI, c. 41, and it came into force on March 28, 1946.

**Tuberculosis.**—Considering that it is vitally important to undertake a vigorous fight against tuberculosis, c. 41 authorizes the government to adopt the measures it sees fit: in particular, to set up an organization for diagnosing the disease, and to contribute to the cost of anti-tuberculosis campaigns, of training specialists to treat the disease and of enlarging and building sanatoriums for consumptives. The Act provides for agreements with Government, corporations, etc., for this purpose; it also constitutes an Advisory Board, the Board consisting of nine members, three of them physicians appointed by the Cabinet, and provides for the appointment of a Director-General of the campaign against tuberculosis. The carrying out of the Act is entrusted to the Minister of Health and the Provincial Government is authorized to spend a sum up to Ten Million Dollars for a period of four years from the date of the coming into force of the Act, which was April 17, 1946.

**Mining and Industrial Developments in New Quebec.**—C. 42 provides for the mining and industrial developments of New Quebec's natural resources unexploited at the present time. The Hollinger North Shore Exploration Company Limited is granted a new licence to carry on its pioneering activities adequately in this region which is uninhabited and difficult of access; the essential works needed to develop and equip the mine, build a railroad and dwelling houses, organize parochial, school and civic buildings are estimated to cost about one hundred and

twenty-five millions and to be of great benefit to national economy and international competition. The Act states that the land affected by this licence for mining research is an area up to three thousand nine hundred square miles, and the Act regulates the Company's activities in exploration, building, mining, and cutting of timber, etc.

**Publicity Service.**—In order to co-ordinate and develop the publicity of Governmental Departments, c. 44 creates the " Provincial Publicity Bureau." The powers and duties of the Bureau are delineated by the Act: to establish and maintain film libraries as well as publicity and touristic information offices, to enter into agreements with other provincial agencies, etc.

**Bar.**—C. 45, amending 1941 Revised Statutes, c. 262, as amended by 1943 Geo. VI, c. 41, decrees that candidates to the study of law are exempted from the last two years of a course of study leading to the degree of Bachelor of Arts, if they are Canadian subjects who have been in active service in the armed forces of Canada or Great Britain or of the United States of America for at least six months during the war 1939–1945 and honourably discharged.

**Dentistry.**—Among various amendments to c. 268, 1941 Revised Statutes, c. 46 opens the profession of dentistry to women; it also forbids all appeals to the courts from decisions by the Council on discipline or by the Board sitting in appeal.

**Accountancy.**—C. 47 regulates the practice of accountancy and auditing. The corporation called " The Society of Chartered Accountants of the Province of Quebec " is continued under the name of " The Institute of Chartered Accountants of Quebec " with head office in the city of Montreal. Only members of the Institute are permitted to use the designation " Chartered Accountant " or the initials "C.A."

**Companies.**—By amending 1941 Revised Statutes, c. 276, c. 48 decrees that the Cabinet is empowered to order the annulment of the charter of a company constituted by letters patent under certain specified conditions.

**District Magistrate's Court.**—Under c. 53, the jurisdiction of the District Magistrate's Court is increased and now includes all suits, whether personal or real, wherein the sum claimed or value of the thing asked for is less than Two Hundred Dollars, whereas formerly only suits under One Hundred Dollars were under its jurisdiction.

**Appeal.**—By c. 54, it is enacted that if the adverse party is not represented by an attorney, a Judge of the Court of King's Bench may prescribe a special mode of service of the notice of appeal on the opposite party when he is absent from the Province and has no domicile, business office, etc., in the Province.

**Municipal Code.**—Various changes are made in the Municipal Code by c. 55. The Minister of Municipal Affairs, not the Lieutenant-Governor as previously, is empowered to order publication of public notices, by-laws, etc., in one language only; local corporations are enabled to prohibit posters and placards or to allow their use by licence or not, and; in the matter of the immovable property which a candidate for the office of mayor or councillor is required to own, privileges and mortgages are not taken into account.

## 10. SASKATCHEWAN

[*Contributed by* J. P. Runciman, Esq., *Legislative Counsel.*]

Of the 118 Acts passed 109 were Public and 9 Private.

**Elections.**—Indians who served in the Naval, Military or Air Forces of Canada in the war of 1914–1918 or in the war of 1939–1945, if otherwise qualified, may now by No. 3 vote at elections of members of the Legislative Assembly.

**Insurance.**—No. 10 is a revision and consolidation of No. 13 of 1944 (second session) which empowered the Government to undertake the business of insurance

and set up a Government Insurance Office. The classes of insurance in which the Government may engage are extended and insurance with the Government Insurance Office is made compulsory in certain cases. The compulsory provision provides that where by any Act or regulation thereunder public moneys are payable periodically in respect of any undertaking, then, as a condition of payment or continuation of payment, any insurance obtained with respect to such undertaking by the person in charge thereof shall be by contract with the insurance office if the insurance office is carrying on business in the required class of insurance, and every bond received by such person, as security for the faithful performance by an employee of his duties in connection with the undertaking, shall be one given by the insurance office.

**Automobile Accident Insurance.**—The main principle of No. 11 is contained in s. 12, which provides that, subject to the provisions of the Act, every person is insured in the amounts therein specified against loss resulting from bodily injuries sustained by him directly, and independently of all other causes, through accidental means, excluding suicide while sane or insane or any attempt thereat while sane or insane, provided that such bodily injuries are suffered as a result of (*a*) driving, riding in or on, or operating a motor vehicle moving on a public highway in Saskatchewan; or (*b*) collision with or being struck, run down or run over by a motor vehicle moving on a public highway in Saskatchewan.

With each application for a certificate of registration, licence or permit for a motor vehicle, or for a chauffeur's licence, operator's licence, instructional or other permit to drive, under The Vehicles Act, or for a renewal thereof, the applicant must file an application to The Saskatchewan Government Insurance Office for a certificate of insurance and pay the basic premium fixed by regulation and any additional premium due and owing at the time of application.

The Act sets forth in detail the benefits to which an insured person or his dependants are entitled in case of loss resulting from bodily injuries occasioned by a motor vehicle accident, and specifies the "statutory conditions" governing recovery of benefits.

**Court of King's Bench.**—A provision inserted by No. 17 in the King's Bench Act provides for imprisonment of a person against whom an order for payment of alimony has been heretofore or is hereafter made, where such person fails to comply with the order and has made or caused to be made any gift, delivery or transfer of property, or has removed or concealed property, with intent to avoid compliance with the order. Another amendment to the Act is consequential upon the amendments made by No. 20 to The Jury Act.

**Surrogate Courts.**—A new section inserted by No. 18 in the Surrogate Courts Act provides that where probate of a will or letters of administration are sought and the value of the property of the deceased does not exceed $500 the clerk shall, on demand of any one entitled thereto other than a creditor, prepare the necessary papers to lead to grant, including all papers and proofs required by The Succession Duty Act and the bond, if any, and administer the necessary oaths. The fee for these services is $4.

Another new section provides that where it appears to the court that the value of the personal property of a deceased does not, so far as can be reasonably ascertained, exceed $500, the court may without the grant of probate or administration, as the case may be, order that the personal property be paid to such person as the court directs to be disposed of by him as it directs, in (*a*) paying the reasonable funeral expenses; (*b*) paying the debts of the deceased; (*c*) paying over any balance to the beneficiaries or next of kin as the case may require or, if there is no next of kin or if none can be conveniently found, paying over the balance to the Provincial Treasurer to be paid into the consolidated fund. Where a balance is paid over to the Provincial Treasurer and any claim thereto is subsequently established to the satisfaction of the court, the Provincial Treasurer, with the authority of the court, may pay the claim out of the consolidated fund.

**Juries.**—Prior to an amendment made to the Jury Act at the 1934–35 session, juries for the trial of civil actions consisted of twelve persons, ten of whom might return a verdict. Since 1935 such juries have consisted of six persons, five of whom might return a verdict. A further amendment by No. 20 brings back the twelve-man jury in civil actions, ten of whom may return a verdict.

**Evidence.**—A provision was inserted in the Saskatchewan Evidence Act for the purpose of abrogating the rule in *Russell* v. *Russell* [1924] A.C. 687, which prevents a male plaintiff in a divorce action from testifying as to non-access if the evidence would tend to bastardize a child. The new provision by No. 21 declares that a husband or wife may, in an action, matter or other proceeding in any court, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time, or within any period of time, before or during the marriage.

This provision is contained in the Uniform Evidence Act adopted by the Conference of Commissioners on Uniformity of Legislation in Canada.

**Maintenance Orders—Enforcement.**—The purpose of No. 22 is to facilitate the enforcement in Saskatchewan of maintenance orders made in England and Northern Ireland and other parts of His Majesty's Dominions and Protectorates and vice versa. "Maintenance Order" means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made. The Act necessarily follows closely the provisions of the United Kingdom Maintenance Orders (Facilities for Enforcement) Act, 1920 (10 & 11 Geo. V, c. 33).

**Insurance Companies.**—A new section inserted by No. 26 in the Saskatchewan Insurance Act provides for the establishment of an assigned risk plan. The section authorizes insurers undertaking automobile public liability insurance or automobile property damage insurance in the Province to make, establish, become members of, and hold themselves bound by, an agreement or plan whereby persons who are otherwise unable to obtain such insurance may, under the agreement or plan, become insured by an insurer that is a party to, or a member of, the agreement or plan. Such agreement or plan has no effect unless approved by the Lieutenant-Governor-in-Council.

**Regional Libraries.**—No. 35 authorizes rural municipalities, villages, towns and cities to associate in the establishment and operation of a regional public library and to grant money for the establishment and make an annual grant for the maintenance thereof. The Act further provides that the Lieutenant-Governor-in-Council may authorize such expenditures as are deemed necessary for the purpose of assisting in the establishment of any regional public library and of contributing towards the maintenance thereof.

**Municipal Expropriation.**—No. 45 is a revision and re-enactment, in more concise form, of the various expropriation provisions formerly contained in The City Act, The Town Act, The Village Act and The Rural Municipality Act.

**Housing.**—A new Part III added by No. 46 to the Housing Act authorizes the Lieutenant-Governor-in-Council to incorporate companies with such powers, objects and limitations as will render them eligible to apply for and to receive loans or guarantees or any other benefit or privilege whatsoever, under Part II of The National Housing Act, 1944 (Canada), in aid of housing projects.

**Grain and Fodder Conservation.**—No. 62 is a new Act conferring powers upon the Lieutenant-Governor-in-Council and upon the councils of rural municipalities for the purpose of conserving grain for use in emergency as seed or for maintenance of live stock in periods when crop yields are abnormally low. The Lieutenant-Governor-in-Council may also authorize the Minister of Agriculture to do such things as are necessary to produce, harvest, store, insure and sell hay and other fodder useful for the maintenance of live stock.

**Plant Pests and Diseases.**—No. 63 is a new Act conferring wide powers upon the Department of Agriculture for the purpose of preventing the introduction and

spread of insect pests and fungus diseases among trees, shrubs, vines and other plants or the fruit or seed thereof. Among other precautionary measures the Act prohibits the importation into the Province and the transportation within the Province of any diseased plant and the sale or disposal of any plant infested with disease. All nurseries must be registered with the department.

**Vegetable Sales.**—The Vegetable Sales Act (No. 64) is also a new enactment. For the purposes of the Act " vegetable " means potatoes grown in Saskatchewan and any other plant grown in Saskatchewan and designated as a vegetable by the Lieutenant-Governor-in-Council. The Lieutenant-Governor-in-Council is empowered to make regulations classifying and establishing grades for vegetables; providing for inspection, grading, packaging, marking, shipping, advertising and selling of vegetables within Saskatchewan; and requiring the registration and licensing of brokers, commission agents, dealers and packers and of persons assembling vegetables and vegetable products. Inspectors have wide powers of entry, inspection, etc. Power is given to limit, by proclamation, the application of the Act to vegetables bought or sold for use within such cities, or such cities and towns, as are named in the proclamation.

**Trade Services.**—The Trade Services Act (No. 67) (another new enactment) imposes upon the Minister of Co-operation and Co-operative Development the duty of encouraging the development of trade in the Province, promoting the marketing of the commodities, goods or services of such trade and facilitating the purchase of commodities, goods or services from outside the Province; and the Minister is empowered to co-operate with any department of the Government of Canada, or of Saskatchewan, or of any other Province of Canada, or with any educational institution, trade association, co-operative association, agency or natural person, in furthering the development of trade within the Province, the development of export markets, the necessary imports of commodities, goods and services, and in the establishment and maintenance of a business and trade information service.

**Fire Prevention.**—Provisions inserted by No. 79 in the Fire Prevention Act authorize the Lieutenant-Governor-in-Council to make regulations governing the installation of distribution systems within cities, towns, villages and hamlets for the supply of natural or manufactured gas, and governing the establishment and operation of any plant and equipment used in the business of dry cleaners and other businesses in which gasoline, naphtha, benzine, benzol or other light petroleum or coal tar products or volatile or inflammable liquids are used.

**Health Services.**—No. 81 replaces the Health Services Act passed at the second session of 1944 and The Municipal Medical and Hospital Services Act which has been on the statute book since 1939.

Under Part I the Minister of Public Health is empowered to divide the Province into health regions and establish such regions for the administration of The Public Health Act and of health services under the new Act, and to provide public health services in any region or part of a region. The Minister estimates the expense involved in providing public health services and determines what portion is to be paid by the region. The amount so determined is apportioned by the Local Government Board among the local governing authorities involved, who pay their respective shares to the Provincial Treasurer. Part I also provides for the establishment of a regional board (a body corporate) for each region, with power to provide health services for residents of the region and pay for such services. Where the estimated expenditures of the regional board are to be raised by means of a general tax, the proportion to be borne by each local governing authority is determined by the Local Government Board. The regional board then requisitions each local governing authority for its share and each authority levies a special tax to raise the required sum and pays over the proceeds to the regional board. Where the estimated expenditures of the regional board are to be raised by means of a personal tax, each authority, upon the requisition of the regional board, levies a personal tax under the provisions of Part IV of the Act

and pays over the proceeds to the board. Provision is also made under Part I for registration by the board of all persons entitled to receive health services from the board.

Part II of the Act continues the Health Services Planning Commission established under the former Act and defines its duties and powers.

Part III embraces some of the provisions that were contained in The Municipal Medical and Hospital Services Act. Municipalities may, with the approval of the Health Services Planning Commission, make their own schemes providing for health services, or may co-operate with other municipalities in the provision of health services.

Part IV, carried forward from The Municipal Medical and Hospital Services Act, provides the machinery for the levy and collection of a personal tax where a municipal scheme is to be financed by means of a personal tax.

Part V contains general provisions, one of which authorizes the Minister of Public Health (*a*) to pay part or the whole of the cost of providing health services for any designated class or classes of persons; (*b*) to make grants, subsidies or loans to local governing authorities, hospital boards and health regions for the provision and operation of health services; (*c*) to pay part or the whole of the cost of providing health services or public health services in any health region or part of a region.

For the purposes of the Act " health services " means services provided by any hospital or services provided by a licensed medical practitioner or dentist, a registered nurse or any other qualified person, and includes drugs, appliances and treatment prescribed by such medical practitioner or dentist or other qualified person.

**Hospitals.**—No. 82 is administered by the Health Services Planning Commission. Subject to the provisions of the Act and the regulations every person who resides in Saskatchewan, is registered pursuant to the Act, was a resident of Saskatchewan for the period of six months prior to application for registration and is otherwise qualified under the Act is entitled to receive hospital services. The commission is authorized to make provision for payment for hospital services on behalf of persons entitled thereto. Services for which payment may be made include public ward facilities, operating and case room facilities, dressings and drugs, X-ray and laboratory procedure, anæsthetics and such other services as the commission may designate with the approval of the Minister of Public Health.

The expenses of administration are to be raised by the levy and collection annually of a tax not exceeding $5 to be paid by or on behalf of each person entitled to receive hospital services, but the levy in respect of any one family must not exceed $30.

Provision is made for the registration of every person by or on whose behalf the tax is paid, and the issue of registration cards.

The Hospital Standards Act No. 99 repeals The Hospitals Act under which all hospitals approved by the Lieutenant-Governor-in-Council, upon complying with the provisions of the Act and regulations, were entitled to receive public aid at the rate of fifty cents per day for each day's actual stay of every patient therein. Under the new Act hospitals, nursing homes and other institutions designated by the Lieutenant-Governor-in-Council may be approved, classified and graded for the purposes of the Act and The Saskatchewan Hospitalization Act. The classification and grade must state the daily public ward rate payable to such institutions under the last-mentioned Act. The Lieutenant-Governor-in-Council is given extensive powers to make regulations governing hospitals.

**Frozen Food Lockers.**—No. 85 is another new Act providing for the licensing and regulation of establishments in which space by means of individual lockers or otherwise is rented or otherwise made available to persons for the storage of frozen food.

**Factories.**—Amendments to the Factories Act changed the definitions of

" child," " youth " and " young girl." " Child " now means by No. 86 a person of either sex under the age of sixteen years. " Youth " means a male person of the age of sixteen years and under the age of eighteen years, and " young girl " means a female person of the age of sixteen years and under the age of eighteen years.

**Workmen's Compensation.**—An amendment by No. 97 to the Workmen's Compensation (Accident Fund) Act provides that, where an employer or executive officer of a corporation is carried on the pay roll at a salary or wage not exceeding $2,500 (formerly $2,000) per annum, he may be classed as a workman for the purposes of the Act. The schedule of industrial diseases covered by the Act was repealed and substituted.

**Consolidations.**—Various Acts were consolidated and enacted in revised form. These included The Fuel Petroleum Products Act, The Village Act, The Rural Municipality Act, The Tax Enforcement Act (Municipal), The University Act, The Stray Animals Act, The Venereal Diseases Act and The Child Welfare Act.

## 11. NEWFOUNDLAND

[*Contributed by* H. G. PUDDESTER, ESQ., K.C., LL.B.]

DURING the calendar year 1946 forty-six Acts were passed. Many of these Acts make minor amendments or involve administrative matters of merely local interest. Only those referred to seem likely to be of any general interest.

**St. John's Harbour.**—No. 1 amends and consolidates the law relating to the Port and Harbour of St. John's and pilotage within its limits. Provision is made for the setting up of a Harbour and Pilotage Commission and for the appointment of a Harbour Master whose duties are defined. The Governor in Commission is given power to make regulations for the management of the Port and to empower the Harbour and Pilotage Commission to engage in any operation which may be necessary for the management of the Port, for the provision of facilities in the Port and for the fees to be charged for the use of such facilities. With the approval of the Governor in Commission, the Harbour and Pilotage Commission may make by-laws governing the employment of pilots and their duties and the fees to be charged for pilotage and moving within the Port; regulations and by-laws dealing with these subjects and some others are attached to the Act as Schedules.

**Bait Fishes.**—No. 15 suspends the operation of c. 156 of the Consolidated Statutes (Third Series) (which deals with the exportation and sale of bait fishes) as respects herring from June 1, 1946, to May 31, 1947.

**National Convention.**—No. 16 and No. 29 constitute a National Convention of forty-five Newfoundlanders and provide for the election of representatives thereto to consider and discuss the financial and economic position of the country and to make recommendations to His Majesty's Government in the United Kingdom as to possible forms of future government to be put before people of Newfoundland at a National Referendum. The Governor in Commission may provide for the Convention the services of such advisers, officers and servants as may be deemed necessary to aid and assist them in the conduct of their business and the discharge of their functions. The members of the Convention are to be paid such amounts in respect of allowance and expenses as the Governor in Commission may determine. Generally, a person may be a candidate only in the district in which he has resided for a period of two years immediately preceding Polling Day, and if he is entitled to vote. A person may vote if he is a British subject of the full age of twenty-one years on Polling Day and has resided in Newfoundland for the period of two years immediately preceding Polling Day. Service personnel are deemed to have been resident, during their period of service, in the district in which they were resident immediately prior to such period of service. Members of the Commission of Government, civil servants, and persons

employed or holding office under the Government, or a corporation, board or body operating any service on behalf of the Government, unless such person has obtained leave from the Government or from such corporation, board or body, are not eligible to be elected to or sit or vote in the Convention.

**War Tax.**—No. 17 removes the duty of 7% imposed by the Act No. 38 of 1940 upon certain goods imported into Newfoundland.

**Companies.**—No. 18 permits a company having a share capital to keep a branch register of members in any place outside Newfoundland and authorizes the use at a branch registry of a duplicate seal. Such company must transmit to its registered office a copy of every entry in its branch registry as soon as may be after the entry is made, and must keep at its registered office a duplicate of its branch register.

**Revenue.**—No. 20 amends and consolidates the Revenue Act, 1939, and amendments thereto.

**Income Tax.**—No. 24 is designed to amend the Income Tax Consolidation Act, 1944, to provide for exemption from tax of the income of approved pension funds in the hands of trustees; for deduction from income of losses sustained in the four years immediately preceding the taxation year; for the payment of tax on fire insurance premiums payable in respect of property in Newfoundland, and on salary and emoluments payable to clergymen for the services rendered the Crown. The terms " taxation year " and " taxation period " have been defined and provision is made for reduction by one-half of certain of the penalties imposed in respect of incorrect returns where voluntary disclosure has been made by the taxpayer.

**Armed Services.**—No. 25 provides that a certificate of the Secretary for Defence shall be sufficient proof of the death of a member of the Armed Forces. The certificate must state that the person named was a member of His Majesty's Forces or of the forces of a State allied with His Majesty and that he has been officially reported dead or presumed to be dead.

**Excess Profits.**—No. 27 exempts from taxation under the Excess Profits Tax Consolidation Act, 1944, profits of less than five thousand dollars.

**Export Tax.**—No. 28 increases the export tax on certain fishery products produced from fish caught during 1946 and subsequent calendar years from two cents to five cents per quintal.

**Patents.**—No. 32 is designed to extend the period of application for Letters Patent of Newfoundland to three years from the date of issue of the first foreign patent. The present period is one year. A proviso has been added to permit of extension in certain cases of the time limited for the doing of any act.

**Emergency Powers.**—No. 35 continues the Emergency Powers Defence Act, 1940, in force for one year from September 20, 1946. Provision is made whereby the Governor in Commission may by Order in Commission direct that the Act continue in force for a further period of one year from September 20, 1947.

## III. AUSTRALIA

### 1. COMMONWEALTH OF AUSTRALIA

[*Contributed by* M. C. Boniwell, Esq., C.B.E., LL.B., *Parliamentary Draftsman.*]

Acts passed, 81.

Included in the legislation passed by the Parliament of the Commonwealth during the year under review were the following measures:—

**Airways.**—The Qantas Empire Airways Agreement Act (No. 75) authorizes the execution on behalf of the Commonwealth of an agreement between the Governments of the Commonwealth and of the United Kingdom and any other

necessary party for the purchase by the Commonwealth of the shares held by British Overseas Airways Corporation in Qantas Empire Airways Limited.

**Aliens.**—The Aliens Deportation Act (No. 29) confers power on the Minister to make an order for the deportation of any alien detained in Australia where a Commission appointed to inquire into certain matters relating to public safety has recommended such deportation.

**Assistance to States.**—The States Grants Act (No. 72) grants the amount of £3,670,000 for financial assistance to the States of South Australia, Western Australia and Tasmania. The States Grants (Drought Relief) Act (No. 70) grants an amount not exceeding £520,000 for the purpose of financial assistance to the States of New South Wales, Victoria and South Australia for the assistance of relieving hardship suffered by persons concerned in the production of cereal crops. The States Grants (Tax Reimbursement) Act (No. 1) repeals the States Grants (Income Tax Reimbursement) Act, 1942, and the States Grants (Entertainments Tax Reimbursement) Act, 1942, and provides for a grant to any State where the Treasurer is satisfied that that State has not imposed a tax upon incomes. The aggregate grant to the States in respect of each of the years ending on June 30, 1947, and June 30, 1948, is £40,000,000 and the allocation to each State is specified in the First Schedule. In respect of each subsequent year the aggregate amount of the grant and the method of distribution among the States is to be determined upon a basis in which population and average wage increases are factors.

**Atomic Energy.**—The Atomic Energy (Control of Materials) Act (No. 34) is an Act " to make provision, in the interests of the defence of the Commonwealth, for the control of materials which are or may be used in producing atomic energy." The Act provides that all prescribed substances, existing in their natural condition or in deposits of waste material obtained from mines, are the property of the Commonwealth. A prescribed substance is uranium, thorium, plutonium or neptunium and includes any other declared substance which, in the opinion of the Minister, may be used in the production of atomic energy. A person who discovers any prescribed substance is required to notify the Minister of such discovery.

**Bankruptcy.**—The Bankruptcy Act (No. 43) amends the Bankruptcy Act, 1924–1945, by inserting a provision which empowers the Bankruptcy Court to order a distribution of dividends where a bankrupt has failed to file a statement of affairs. It also provides that where a vacancy occurs in the office of trustee under a composition or scheme of arrangement or under a deed of arrangement the official receiver may be appointed to act as trustee.

**Bounties.**—The Raw Cotton Bounty Act (No. 51) amends the Raw Cotton Bounty Act, 1940–1941, by authorizing the payment of an additional amount of bounty on raw cotton until December 31, 1951.

**Broadcasting.**—The Australian Broadcasting Act (No. 39) amends the Australian Broadcasting Act, 1942, by inserting in that Act provisions relating to the appointment of officers to the service of the Australian Broadcasting Commission. The Act also enables listener's licences to be issued at a reduced fee to certain pensioners. The Parliamentary Proceedings Broadcasting Act (No. 20) provides for the broadcasting of the proceedings of Parliament. The Australian Broadcasting Commission is required to broadcast the proceedings of the Senate and House of Representatives. The Act provides for the appointment of a Joint Parliamentary Committee which is to consider and specify the general principles upon which there should be determined the days and periods during which the proceedings are to be broadcast.

**Census and Statistics.**—The Census and Statistics Act (No. 74) amends the Census and Statistics Act, 1905–1938, by removing from the list of questions which may be asked in any census, questions relating to sickness, infirmity and education.

**Coal.**—The Coal Industry Act (No. 40) is designed to provide means for securing and maintaining adequate supplies of coal throughout Australia and in trade with other countries and for the regulation and improvement of the coal industry in New South Wales, which State is the main source of supply of coal. The State of New South Wales has also passed an Act on very similar lines. The Commonwealth and State Acts taken together provide for the establishment, by joint action taken by the Commonwealth and the State, of a Joint Coal Board and similarly for the establishment of a Coal Industry Tribunal. The Board deals with the production, conservation and distribution of coal, the provision of amenities for employees in the industries and other matters specified in the Act. The Tribunal's functions are to prevent and settle industrial disputes in the coal mining industry. Both the Board and the Tribunal derive their powers in part from the Commonwealth Act and in part from the State Act.

**Constitution Alteration.**—The Constitution Alteration (Social Services) (No. 81). This Act altered the Constitution by adding a new placitum (xxiiiA) in section 51 of the Constitution thereby empowering the Parliament to make laws for the peace, order and good government of the Commonwealth with respect to the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances.

The proposal to alter the Constitution arose from the decision of the High Court in *Attorney-General for Victoria (at the relation of Dale and others)* v. *The Commonwealth and others* (71 C.L.R. 237), in which a majority of the Court held the Pharmaceutical Benefits Act, 1944, of the Commonwealth to be invalid.

The Commonwealth Parliament has no general power to provide benefits of a " social services " character. Until the alteration of the Constitution which is under review, the only specific power of this character which the Parliament had was the power to make laws with respect to invalid and old age pensions. Various governments since federation had, however, provided for other benefits, such as maternity allowances, widows' pensions and child endowment, in reliance on the power contained in s. 81 of the Constitution to appropriate the Consolidated Revenue Fund " for the purposes of the Commonwealth."

The extent of this " appropriation power " had been a matter of debate, the widest view being that the " purposes of the Commonwealth " are entirely a matter for the Parliament to decide, and the narrowest view being that those purposes are confined to purposes in respect of which power to legislate is conferred on the Parliament elsewhere in the Constitution.

The extent of the appropriation power arose squarely in the case referred to. The Pharmaceutical Benefits Act, 1944, which was held invalid. provided for the supply by chemists of free medicines to the public at the expense of the Commonwealth. A majority of the Court rejected the widest view of the appropriation power and held that the " purposes of the Commonwealth " are not a matter for unfettered determination by Parliament, but must be related to the powers and functions of the Commonwealth under the Constitution.

This decision threw doubt on the validity of a number of Commonwealth Acts, especially Acts providing for social services, and the Government introduced a Bill to alter the Constitution by conferring on the Commonwealth power to legislate for the provision of certain enumerated benefits of a social services character. These benefits included those for which legislative provision had already been made, but also paved the way for a considerable expansion of existing social services. The Act did not attempt to expand the appropriation power in a general way. It met with little opposition and, having been passed by the necessary majorities in Parliament and of the people, as required by s. 128 of the Constitution, received the Royal Assent and became law on December 19, 1946.

**Customs.**—The Customs Tariff (Special War Duty) Validation Act (No. 68)

amends the Customs Tariff (Special War Duty) Validation Act (No. 2), 1943, by terminating as from November 15, 1946, the duty authorized by the last-mentioned Act in respect of certain goods. The Customs Tariff Validation Act (No. 47) validates the collection of duties or customs demanded or collected pursuant to Customs Tariff proposals introduced into the House of Representatives on July 31, 1946.

**Electoral.**—The Commonwealth Electoral Act (No. 42) amends existing legislation in respect of the allowable electoral expenses of candidates for election to the Senate or the House of Representatives. The Act also contains provision limiting the size of electoral posters and prohibiting the writing of electoral matter on roadways, footpaths, etc.

**Excise.**—The Excise Tariff Validation Act (No. 48) validates the collection of duties of excise demanded or collected pursuant to the Excise Tariff proposals introduced into the House of Representatives on July 31, 1946. The Excise Tariff Validation Act (No. 2) (No. 69) amends the Excise Tariff Validation Act (No. 2) 1943 by the insertion of a provision under which certain of the duties of excise imposed will cease to operate on November 15, 1946.

**Forestry.**—The Forestry and Timber Bureau Act (No. 46) extends the powers and functions of the Commonwealth Forestry Bureau to include the collection of statistics and information regarding timber supplies, the formulation of programmes in respect of the supply, production and distribution of timber, and the carrying out of investigations and research in such matters.

**Housing.**—The Loan (Housing) Act (No. 76) authorizes the raising of a loan of £10 million for making advances to the States for the purposes of housing, in pursuance of the Agreement the execution of which is authorized by the Commonwealth and State Housing Agreement Act, 1945.

**Immigration.**—The Immigration (Guardianship of Children) Act (No. 45) makes provision for the guardianship of evacuee children brought from the United Kingdom during the war years and for any immigrant children who come to Australia otherwise than in charge of their parents or relatives. The Act constitutes the Minister guardian of such children and as such he has the same rights, powers, duties, obligations and liabilities as a natural guardian until a child attains the age of twenty-one years.

**Industrial Arbitration.**—The Commonwealth Conciliation and Arbitration Act (No. 14) amended the Commonwealth Conciliation and Arbitration Act, 1901–1934, by the insertion of a provision to the effect that in the event of the absence of the Chief Judge of the Commonwealth Court of Conciliation and Arbitration the Senior Judge is to exercise all the powers and functions of the Chief Judge. It also provides that in proceedings concerned with the question of standard hours or the basic wage the Court is to be constituted by the Chief Judge and *not less than* two other Judges. Previously the law required such questions to be determined by the Chief Judge and two other Judges. The Commonwealth Conciliation and Arbitration Act (No. 2) (No. 30) made a further amendment by providing that where a Judge of the Court has, prior to his appointment, served in any judicial office under a State, the period of service, up to a period of ten years, is to be added to and be deemed part of his service as a Judge. This provision affects the calculation of Judges' pensions.

**Inscribed Stock.**—The Commonwealth Inscribed Stock Act (No. 21) makes provision for the issue of savings certificates and savings stamps.

**Judiciary.**—The Judiciary Act (No. 10) increases the number of Justices of the High Court of Australia from six to seven.

**Meat Industry.**—The Meat Export Control Act (No. 36) amends the Meat Export Control Act, 1935–1938, by reconstituting the Australian Meat Board which now consists of twelve members. Four members of the Board represent the lamb and mutton producers, two members represent the beef producers and one member represents the pig producers. Other members represent meat

exporting companies, publicly-owned abattoirs and employees engaged in the slaughter and preparation of meat. The powers of the Board are extended to enable it to purchase, on behalf of the Commonwealth, meat or meat exports, to sell meat or meat products and to manage or control all matters connected with the handling, storage, etc., of meat. The Meat Industry Control Act (No. 37) transfers to the Board constituted under the last-mentioned Act the powers and functions theretofor exercisable by the Controller of Meat Supplies and the Meat Canning Committee appointed under regulations made under the National Security Act. The Board is authorized to exercise the transferred powers and functions during the continuance of the Regulations made under the National Security Act.

**Ministers of State.**—The Ministers of State Act (No. 73). By Act No. 24 of 1941 the Ministers of State Act, 1935–1938, was amended by including a provision which was to operate during the continuance of the National Security Act whereby the maximum number of Ministers of State was fixed at nineteen and the amount appropriated for the salaries of Ministers was fixed at £21,250. Provision was made by Act No. 15 for the termination of the National Security Act on December 31, 1946, and Act No. 73 makes permanent provision that the number of Ministers shall not exceed nineteen and also provides for the payment of salaries on the existing basis.

**Nationality.**—The Nationality Act (No. 9) makes provision affecting the national status of women who are British subjects resident in Australia and who marry aliens. The Nationality Act (No. 2) (No. 28) extends the Nationality Act, 1920–1936, to the Territory of New Guinea.

**National University.**—The Australian National University Act (No. 22) provides for the establishment of a University in the Australian Capital Territory. The University is to consist of a Council and Convocation and graduate and undergraduate members. Upon the Council being duly constituted the University is to be a body corporate by the name of the Australian National University.

**Overseas Telecommunications.**—The Overseas Telecommunications Act (No. 23) authorizes the execution by or on behalf of the Commonwealth of Agreements between the Governments of the United Kingdom, Canada, Australia, New Zealand, South Africa, India and Southern Rhodesia designed to give effect to recommendations adopted at a conference of representatives of those Governments for the adoption of measures for promoting and co-ordinating the efficiency and development of the telecommunications services of the British Commonwealth and Empire. The Act repeals the Wireless Agreement Acts of 1924 and 1927. It establishes and constitutes the Overseas Telecommunications Commission (Australia) which consists of five Commissioners. The Commission is empowered to establish, maintain and operate in Australia cable and radio telegraph services between Australia and other countries and ships at sea, to establish and maintain in Australia radio transmitting and receiving apparatus for overseas telephone services and to establish, maintain and operate any other radio-communication services in respect of which a licence is granted in pursuance of the Wireless Telegraphy Act, 1905–1936. In carrying out these functions the Commission is to comply with the provisions of the International Telecommunication Conventions. An amount of £3 million may be advanced to the Commission by the Treasurer for the purposes of the Act.

**Parliamentary Papers.**—The Parliamentary Papers Act (No. 35) amends the existing law on the subject of Parliamentary papers by empowering a committee of either House, or of both Houses, of the Parliament to authorize the publication of any document laid before it or of any evidence given before it.

**Patents.**—The Patents Act (No. 38) provides for the publication and public inspection of a complete specification of a patent after the specification has been lodged. The Act also makes provision with respect to groundless threats of legal proceedings and false representations as to patents and patented articles.

**Pensions.**—The Invalid and Old-age Pensions Act (No. 26) raises the net capital value of property which a person may possess, without affecting his right to a pension, from £400 to £650. In addition the amount of permissible income which a pensioner may have is increased from 12/6d. to £1 per week. In the assessment of the value of accumulated property of a pensioner certain items such as furniture and personal effects and the surrender value of life insurance policies are to be disregarded. The Widows' Pensions Act (No. 27) increases the weekly amount of income which a widow pensioner may have without her pension being affected.

**Public Service.**—The Commonwealth Public Service Act (No. 16) provides for the appointment to or employment in the Commonwealth Public Service of certain State employees on temporary transfer in accordance with the provisions of the Income Tax (War-time Arrangements) Act, 1942–1944. The Act preserves prior service for the purposes of eligibility for accrued recreation leave, sick leave, furlough and gratuity. The Superannuation Act (No. 2) preserves to State taxation officers, who were taken over by the Commonwealth, their rights in respect of superannuation.

**Railways.**—The Railway Standardization Agreement Act (No. 50) authorizes the execution by or on behalf of the Commonwealth of an agreement between the Commonwealth and the States of New South Wales, Victoria, and South Australia in relation to the standardization of certain railways. The Act also approves the raising of loans for the purposes of the Agreement.

**Repatriation.**—The Australian Soldiers' Repatriation Act (No. 49) makes certain amendments of the existing law with respect to accumulated property as affecting the right to Service pensions.

**Sugar.**—The Sugar Agreement Act (No. 11) repeals the Sugar Agreement Act, 1940, and approves an agreement in respect of the period 1946–1951 between the Government of the Commonwealth and the Government of the State of Queensland. The agreement deals, as do prior agreements on this subject, with the acquisition of raw sugar by the Queensland Government and the price and disposition of the sugar so acquired. The Act prohibits the importation of sugar into the Commonwealth except with the consent of the Minister.

**Taxation.**—(i) *Entertainments Tax:* The Entertainments Tax Act (No. 5) removes from the Entertainments Tax Act the provision which limits its operation by relation to the period of the war, and the Entertainments Tax Assessment Act (No. 4) makes similar provision in respect of the assessment of entertainments tax. The law on this subject will therefore have indefinite operation.

(ii) *Income Tax:* The Income Tax Act (No. 31) imposes income tax at the rates declared in the Schedule to the Act. Where the taxable income derived from personal exertion does not exceed £300 the rate of tax is 36.06 pence for every £1 and the tax increases to 174 pence per £1 when the income exceeds £5,000. The rate of tax in respect of a taxable income derived from property is 47.1 pence per £1 where the income exceeds £200 and the rate increases to 174 pence in the £1 where the income exceeds £5,000. The rate of tax payable by a company is 72 pence in the £1 and in the case of a mutual life assurance company 60 pence in the £1. The Income Tax Assessment Act (No. 6) effects extensive amendments to the Income Tax Assessment Act, 1936–1945. The principal amendments relate to (*a*) the allowance of an additional depreciation deduction in respect of amenities provided by employers for employees; (*b*) the allowance of a special depreciation allowance deduction in respect of plant and machinery acquired within the five years' post-war period after June 30, 1945; (*c*) the provision of additional allowances for expenditure on scientific research; and (*d*) the allowance of a credit in respect of certain losses and expenses incurred in re-converting businesses to peace-time production. The Income Tax (War-time Arrangements) Act (No. 3) repeals the main provisions of the Income Tax (War-time Arrangements) Act, 1942–1944. The Act provides that a State officer

transferred to the Commonwealth under the Act may be reinstated in the State service if he so desires.

(iii) *Sales Tax:* The Sales Tax Acts (Nos. 1 to 9) (Nos. 58 to 66) reduce the general rate of sales tax from 12½ per cent. to 10 per cent. as from November 15, 1946. The reduced rate applies to certain essential household goods. The Sales Tax Assessment Act (No. 9) (No. 13) ensures that there will be no liability for tax in cases where the lessee of manufacturers' machinery quotes his certificate in respect of the leasing of such machinery. The Sales Tax (Exemptions and Classifications) Act (No. 12) restores the exemption from Sales Tax of certain food-stuffs such as canned meat and canned vegetables and exempts some items of household fittings and building materials. It also extends exemption to certain machinery and equipment leased by a manufacturer for use in manufacturing operations. The Sales Tax (Exemptions and Classifications) Act (No. 2) (No. 67) makes further restoration of exemptions in respect of Sales Tax. The goods affected include certain machinery items, food and clothing coupon goods.

(iv) *Social Services Contribution:* The Social Services Contribution Act (No. 33) prescribes a graduated scale of social service contributions which range from 3d. in the £1 to 18d. in the £1. The Social Services Contribution Assessment Act (No. 32) makes a machinery amendment to the Social Services Contribution Assessment Act 1945 in relation to the graduated scale of contribution.

(v) *War-time Company Tax:* The War-time (Company) Tax Assessment Act (No. 7) will permit allowances of tax in respect of certain re-conversion expenditure incurred by taxpayers.

**Tradesmen's Rights.**—The Tradesmen's Rights Regulation Act (No. 41) makes provision in relation to rights of employment in certain trades. The trades affected are the engineering trade, the boilermaking trade, the blacksmithing trade, the electrical trade and the sheet metal trade. The Act repeals certain regulations made under the National Security Act relating to the dilution of labour in those trades and embodies provisions similar in effect to those regulations.

**Tuberculosis.**—The Tuberculosis Act (No. 44) enables the Commonwealth to pay to the States for the benefit of sufferers from tuberculosis an annual amount not exceeding £250,000. The amount payable to any State is to be determined by the Minister.

**War Service Homes.**—The War Service Homes Act (No. 8) extends war service homes benefits to certain members of the mercantile marine who served in Australian coastal shipping during the war and increases the statutory loan limit of £950 to £1,250.

**War-time Legislation.**—The National Security Act (No. 15) provides that the National Security Act, 1939–1943, and all the regulations made thereunder and the orders, rules and by-laws made under such regulations shall cease to have effect at midnight on December 31, 1946. The Defence (Transitional Provisions) Act (No. 77) provides for the continuance in operation until December 31, 1947, of certain of the regulations and orders which would otherwise have ceased by reason of the Act first mentioned under this heading.

**Wheat.**—The Wheat Export Charge Act (No. 25) imposes a charge upon the export of wheat and wheat products. The rate of charge per bushel of wheat exported is 50 per cent. of the amount by which the price per bushel exceeds 5/2d. This Act was amended by the Wheat Export Charge Act (No. 2) (No. 79) which imposes a charge on wheat or wheat products which, although not acquired, may be exported. The Wheat Industry Assistance Act (No. 71) enables further amounts to be applied for assistance in marginal wheat areas. The Wheat Industry Stabilization Act (No. 24) constitutes the Australian Wheat Board which is empowered to purchase or otherwise acquire and sell wheat or wheat products and to manage and control all matters connected with its handling, storage, protection and shipment. The Act continues in force the National Security (Wheat Acquisition) Regulations in so far as they relate to any wheat season up to and

including 1945–46. The regulations are, however, continued in force until December 31, 1947, by the Defence (Transitional Provisions) Act (No. 77) referred to above. A Wheat Industry Stabilization Board is set up and each State is represented on the Board by one member. The intention is that this body shall exercise powers and functions conferred upon it by State legislation. The Act also establishes the Wheat Prices Stabilization Fund into which is to be paid an amount equivalent to the charges collected under the Wheat Export Charge Acts 1946. The Wheat Industry Stabilization Act (No. 2) (No. 80) makes minor amendments to the Wheat Industry Stabilization Act and validates a wheat acquisition order made in 1939. The Wheat Tax Act (No. 78) imposes a tax on wheat acquired by the Commonwealth. The rate of tax is in effect 50 per cent. of the amount by which the average price of export wheat per bushel free on rail at ports of export exceeds 5/2d. The Act permits a lower rate of tax to be prescribed by regulation.

**Wool.**—The Wool Industry Fund Act (No. 52) provides for the application of certain funds vested in the Australian Wool Realization Commission, a body established by the Wool Realization Act, 1945.

## 2. NEW SOUTH WALES

[*Contributed by* J. W. FERGUSON, ESQ., *Under-Secretary*.]

**Auctioneers, Stock and Station and Real Estate Agents.**—No. 18 extends the powers vested in the Council and Registrar in relation to the inspection of the records and trust accounts of licensees; enables the Council to review alleged overcharges of commission, fees, expenses or charges; and adds to the grounds on which objection may be taken to the grant or renewal of a licence. The protection afforded the public by the Fidelity Guarantee Fund is extended by increasing from £500 to £2,000 the total sum that may be paid to any one person from the fund and by enlarging the grounds on which a claim against the fund may be made. Additional responsibilities are placed on licensees in connection with the making and preservation of records Amendments of a machinery nature to the principal Act are provided in respect mainly of the restoration of licences after expiration and the proof in Court of the fact that a person was or was not the holder of a licence.

**Bread Industry.**—No. 40 applies to the counties of Cumberland and Northumberland and such other districts as may be proclaimed by the Governor. Provision is made for the day baking of bread by prohibiting the making of bread between 6 p.m. and the commencing time on the following day as set out in the schedule to the Act. The delivery of bread outside award hours fixed for breadcarters and after 11 o'clock on Saturdays is also prohibited.

**Broken Hill Water and Sewerage.**—No. 52 makes provision for an increased Government contribution to the funds of the Broken Hill Water Board and for increased charges to be paid for water supplied by the mining companies operating in Broken Hill. Henceforth, the Government will contribute a fixed amount of £13,000 per annum to the water fund, together with the amount of any deficit in the sewerage fund in any year up to a maximum of £3,000 per annum. The charge for water supplied to the mining companies will be 5/– per thousand gallons and the companies will be collectively responsible for a minimum annual payment for water of £46,000. The present charge of 2/6d. a thousand gallons will be preserved where water is supplied to a mining company and is used solely for any dwelling or plantation or any other purpose which the Board determines to be a social service. Over a period of 45 years the water fund will be adjusted quinquennially and if there is a deficit in that fund at the end of any such 5-year period, the mining companies will be collectively responsible for the payment to the Board of the amount of that deficit. If the water fund produces a surplus

at the end of a quinquennial period, the amount of that surplus will be equally divided between the Government on the one side and the mining companies on the other.

The increased contributions and payments will be necessary to meet the higher costs of operating and maintaining the Broken Hill water supply upon its augmentation by the construction of a pipeline from the Darling River at Menindie to Broken Hill.

**Water.**—No. 31 sanctions and provides for the construction by the Water Conservation and Irrigation Commission at an estimated cost of £2,000,000 of the Burrendong dam across the Macquarie River about 20 miles upstream from Wellington, of a height sufficient to store about 520,000 acre-feet of water, with concrete spillway, gates and outlets for regulation of the discharge of water from the storage.

No. 30 sanctions and provides for the construction by the Water Conservation and Irrigation Commission at an estimated cost of £1,500,000 of the Glenbawn dam across the Hunter River about 8 miles above the junction of the Hunter and Pages Rivers, of a height sufficient to store about 120,000 acre-feet of water, with spillway, gates and outlets for regulation of the discharge of water from the storage.

No. 21 sanctions and provides for the carrying out by the Water Conservation and Irrigation Commission at an estimated cost of £200,000 of the works necessary for the diversion of water from the Lachlan River, the storage of water in Lake Ballyrogan and the discharge of water from that storage into the Lachlan River.

**Coal Industry.**—No. 44 is complementary to and largely identical with the Coal Industry Act, 1946 (Commonwealth), and provides for the setting up of a Joint Coal Board consisting of a chairman and two other members appointed for not more than seven years. The powers and functions of the Board include the taking of such action as is necessary (*a*) to ensure that coal is produced in New South Wales in such quantities and with such regularity as will meet requirements throughout Australia and in trade with other countries; (*b*) to ensure that the coal resources of the State are conserved, developed, worked, and used to the best advantage in the public interest; (*c*) to ensure that coal produced in the State is distributed and used in such manner, quantities, classes, and grades, and at such prices as are calculated best to serve the public interest, and to secure the economical use of coal and the maintenance of essential services and industrial activities; (*d*) to promote the welfare of workers engaged in the coal industry in this State, establish sound industrial welfare practices, provide amenities for employees, make provision for the health and safety of mine workers and the enforcement of measures for the abatement of dust in mines, and establish health, educational, recreational, housing and other facilities for communities of persons in coal mining districts; and (*e*) to regulate employment in and recruitment to the coal industry, promote stability of employment and make provision for the training, efficiency and competency of persons engaged in the coal industry.

The Board is also empowered to suspend or exclude from employment in the industry, subject to appeal, any superintendent, manager or other person employed in the industry who acts in a manner prejudicial to its effective working. The Board may take control of the operation of any coal mine and may establish, maintain and operate a coal mine or mines. The Board may acquire a mine either by agreement or resumption but action shall not be taken by way of resumption except with the approval of the Premier and the Prime Minister. Authority is given for the constitution of a Coal Industry Tribunal and the appointment of a person to constitute that Tribunal which shall consider and determine industrial disputes of which it has cognizance. The Tribunal will have the powers of a Judge of the Industrial Commission of New South Wales. The Tribunal is enabled to appoint persons to be Local Coal Authorities for the

settlement of disputes of local significance. The joint Coal Board is empowered, in addition, to appoint, and when requested by the Tribunal, shall appoint at any mine in New South Wales a mine conciliation committee consisting of an equal number of employer and employee representatives to deal with industrial grievances arising at the mine. The Prime Minister of the Commonwealth may, in agreement with the Premier, issue directions to the Board on matters of policy which it shall be the duty of the Board to observe and carry out.

**Census.**—No. 29 provides for the discontinuance of the publication in the *Government Gazette* of forms prepared by the Government Statistician and approved by the Minister in connection with returns required to be furnished under the Census Act, 1901, by proprietors of factories and mines, occupiers of land, owners of stock and banking insurance and other companies.

**Commonwealth and State Housing Agreement.**—No. 19 ratifies an agreement entered into on November 19, 1945, between the Commonwealth and the States in connection with the carrying out by the States of rental housing projects. The more important provisions of the agreement provide that the money required for the carrying out of the State's housing projects shall be made available by the Commonwealth on loan repayable by equal annual instalments over a period of 53 years; that tenants whose income is comparatively low in relation to the economic rental of the premises occupied may be granted a rebate of rental; and that the Commonwealth will bear a portion of any losses incurred in respect of the rental rebate scheme. Dwellings shall be allocated between metropolitan and country areas and allotted to persons in need of proper housing accommodation. In each allocation a proportion as agreed upon between the Commonwealth and the State shall be assigned to members or discharged members of the Forces or Merchant Navy or their dependants or widows.

**Compensation to Relatives.**—No. 23 provides that pensions payable under the following Acts shall not be taken into account when assessing the amount of damages in actions under the principal Act: the Widows' Pensions Act, 1925–1942; the Coal and Oil Shale Mine Workers (Pensions) Act, 1941–1942; the Australian Soldiers' Repatriation Act, 1920-1943, of the Parliament of the Commonwealth; the Widows' Pensions Act, 1942–1945, of the Parliament of the Commonwealth; the Invalid and Old-age Pensions Act, 1908–1945, of the Parliament of the Commonwealth; and any Act (Commonwealth or State) amending or replacing any such Act.

**Cook's River Improvement.**—No. 24 sanctions the carrying out at an estimated cost of £600,000 of certain works for the improvement of Cook's River, Wolli Creek and adjacent low-lying areas.

**Economic Stability and War-time Provisions Continuance.**—No. 54 provides machinery for the continuation as part of the law of New South Wales of the National Security Regulations dealing with prices, tenancy matters, capital issues and economic organization. A further part of the Act relates to hire-purchase agreements and money-lenders. Provision is made for the payment by persons entering into hire-purchase agreements of minimum deposits of either 10 per cent. or 20 per cent. of the cash price. Certain specified obligations upon guarantors in relation to hire-purchase transactions are to be enforceable only if attested in a special manner. Goods may be removed by a hirer under a hire-purchase agreement from one address to another, notwithstanding any term or condition to the contrary in such agreement, where the removal is authorized by a court of petty sessions. The payment of commission by a financier to a seller of goods on hire purchase, in consideration of the latter placing the financing of the hire-purchase agreement with such financier, is prohibited. Maximum interest and discount charges are specified in relation to cash orders and it is provided that cash orders shall be repayable within a period not exceeding twenty weeks. Action has also been taken to incorporate in the Money-lenders and Infants Loans Act, 1941, certain provisions of the National Security (Cash Orders and Hire-

Purchase Agreements) Regulations dealing with cash orders. The principal one of these provides that payment of a cash order cannot be enforced against a married person except where his or her spouse consented to the transaction in writing.

As the law stands the Acts which regulate the various professions require lists of the members for the time being of those professions to be published annually in the *Government Gazette*. Henceforth, the publication of such lists in the *Government Gazette* shall be discontinued but they shall be printed and published annually by the Government Printer.

The display of electoral posters and electoral matter at any election or referendum is to be restricted. The size of posters is not to exceed 10 inches by 6 inches and the defacement of footpaths, buildings and walls by electoral matter marked thereon by such means as chalk, paint or tar is forbidden.

Power is conferred on the Chief Secretary to give directions to control the lighting of fires in the open air so as to minimise the risk of bush fires. The powers of the Chief Secretary in this regard may be delegated to the council of any area.

For the period of six months following December 31, 1945, the days on which race-meetings may be held within seventy-five miles of the General Post Office, Sydney, and within forty miles of the principal post office, Newcastle, are confined to Saturdays and public holidays. The Governor may by proclamation extend such period but such extension shall not exceed three months.

**Factories and Shops.**—No. 17 provides for a universal Saturday half holiday for shop employees. Where, as a result of this measure, the weekly half holiday in a shopping district is altered to Saturday, provision is made for the taking of a poll at any time after the expiration of six months to determine whether any specified weekday shall in lieu of Saturday be early-closing day in that district. The powers of the Factory Welfare Board which were previously limited to factories only, have been extended to enable investigations and recommendations to be made in regard to the welfare of employees in any industry, including the provision of facilities for rest, recreation, meals, changing and protection of clothing and washing. Also, the Minister is empowered to establish, on the recommendation of the Board, safety committees in factories in addition to welfare committees. The obligation is cast on the occupier of a factory securely to fence dangerous machinery. Regulations may be made providing for the examination, certification, supervision and employment of engine drivers. The provisions of the principal Act relating to trade descriptions are extended to any goods specified by the Governor so as to enable heavier penalties to be imposed in cases where such goods are falsely described.

**Farm Water Supplies.**—No. 22 enables individual farmers or groups of farmers to provide and improve water supplies to their farms for domestic, stock, and irrigation purposes; authorizes the making of advances of money to farmers so that they may have works of water supply carried out; and empowers the Water Conservation and Irrigation Commission to carry out such works for farmers. Provision is made for the Commission, at the request and on behalf of farmers, conducting surveys and investigations, preparing designs and estimates of cost and supervising the carrying out of works; the Commission undertaking the actual works of water supply where an advance is made or where the farmer is prepared to make a cash payment for the works; the letting on hire by the Commission to the farmers of plant and machinery to enable them to carry out the works; advances of money being made to farmers by the Rural Bank of New South Wales through its Irrigation Agency to enable works to be constructed for either individual farms or groups of farms; the Commission determining the amounts of the advances to be made by the Bank and the works to be undertaken with such moneys; and for the works, the subject of an advance, being carried out by the Commission or the farmer or private contractor.

**Firearms.**—No. 43 increases the maximum penalties that may be imposed upon persons convicted summarily of certain offences relating to the possession, use and carrying of firearms and other lethal weapons. The Crimes Act, 1900, is amended so that certain offences relating to firearms may be prosecuted on indictment, and upon conviction in such cases, penalties ranging up to seven years' penal servitude may be imposed. The provisions of the Police Offences Act, 1901–1945, are extended to cover hand grenades and the definition of "pistol" in the Pistol Licence Act, 1927–1936, enlarged to include a pistol which could but for some omission or mechanical defect be discharged. Henceforth, also, the mere possession of any firearm whatsoever by a person with any previous conviction or a person found consorting will be an offence. Previously, it was necessary to prove that possession or carriage of the firearm was in a public place, street or highway.

**Hospital Benefits.**—No. 37 authorizes the State to enter into an agreement with the Commonwealth for the payment by the Commonwealth of benefits under the Hospital Benefits Act (Commonwealth) to Government subsidised public hospitals in New South Wales and approves the agreement as executed. As a consequence, the Public Hospitals Act, 1929–1943, is amended so as to provide that during the currency of the agreement, no means test shall be imposed on or fees charged to qualified persons occupying beds in public wards of public hospitals except in instances where such beds are temporarily being used as non-public beds. Furthermore, qualified persons occupying non-public beds in public hospitals will have their hospital fees reduced by 6/– per day, i.e. the amount of the Commonwealth hospital benefit rate. Provision is also made for the termination or variation by the Governor by proclamation of the rules of certain hospital contribution schemes.

**Industrial Arbitration (Police).**—No. 28 enables the members of the Police Force to exercise the same rights under the Industrial Arbitration Act, 1940–1943, as are enjoyed by employees under the Public Service Act, 1902. In both cases restricted access to the Industrial Arbitration Court applies, that is, in respect of pay, overtime rights and allowances.

**Inflammable Liquid.**—No. 25 enables the Minister to refuse applications for the licensing of stores for the keeping of inflammable liquid and/or dangerous goods in bulk or the amendment of any such licence, if the granting thereof would be contrary to public interests or safety, notwithstanding that all requirements of the Act can or have been observed. The quantity of inflammable liquid which may be kept in any place not within a city or town for private use is increased to one thousand gallons. Also, a greater quantity of mineral spirit than three gallons (viz., 16 gallons) may now be kept and used for industrial purposes without licence or registration. Inflammable liquid not exceeding exemption quantities may be kept on registered premises or licensed stores in addition to any inflammable liquid which is stored in underground tanks under licence or registration. Provision is also made for the keeping of such additional fire-fighting apparatus or equipment as an inspector may require; and the extension to certain declared dangerous goods of sections of the Act applicable to inflammable liquid.

**Irrigation and Water.**—No. 35 makes a number of amendments of a machinery nature to the Irrigation Act, 1912–1944, the Crown Lands Consolidation Act, 1913, and the Wentworth Irrigation Act. There are also some amendments of the Water Act, 1912–1944, the more important of which enable the Water Conservation and Irrigation Commission to refuse to grant applications for licences; landholders whose land is not on a river bank to obtain licences to take water from rivers; the Commission to fix maximum areas of land and of crops which may be irrigated and the maximum quantities of water which may be taken from a river; and the Commission to refuse licences and the supply of water in water supply districts for the irrigation of grasses or pastures which are not sown grasses or improved pastures.

**Land Acquisition.**—No. 55 empowers the Governor to appropriate or resume lands for charitable institutions. An " Institution " is defined by the Act to be any hospital, orphanage, school, kindergarten, day nursery, infant or child welfare centre or pre-natal or post-natal clinic, centre or home, and any institution or establishment of a charitable, benevolent or philanthropic character. The Public Works Act, 1912, is also amended with regard to the rates of interest to be paid by the Government on compensation payable under that Act. Compensation so payable shall henceforth bear interest at the rate of 4 per cent. for a period of twelve months after the notification of resumption, and thereafter at the rate payable by a bank on a fixed deposit for twelve months.

**Tomago.**—No. 50 empowers the Governor to appropriate or resume an area of about 120 acres near Hexham and to vest such land in the representatives of a company to be formed for the purpose of manufacturing rayon yarn and staple fibre.

**Law Reform (Miscellaneous Provisions).**—No. 33 enables a person against whom a wrong has been committed and who is in doubt as to which of two or more persons is responsible, or whether all or some of such persons are jointly responsible, to sue such two or more persons as defendants in one action and so have the question of liability determined. A defendant may join a third party as defendant where he considers he can establish that the third party is jointly liable, is solely liable or is liable to indemnify him. The rule of law is abolished whereunder a plaintiff who has obtained judgment against any one person responsible for a wrong suffered by him, may not sue any other person responsible. In an action of tort a person adjudged liable in damages may recover a just proportion of the total damages from any other persons also liable. On the happening of an event giving rise to a claim for damages or compensation in respect of which the party liable is entitled to be indemnified by an insurer, any insurance moneys payable are made subject to a charge in favour of the plaintiff to the amount of any verdict which may be obtained.

**Legislative Assembly Members' Pensions.**—No. 32 provides for the establishment of a provident fund for members of the Legislative Assembly and for periodical contributions thereto by such members; the appointment of trustees for the management and administration of the fund; the payment of a pension under certain circumstances to each member of the Legislative Assembly who ceases to be a member; the payment of a pension to the widow of a deceased pensioner; the suspension of the pension rights of a person who is appointed to an office of profit or is elected to the Parliament of the Commonwealth or of any State; the refund of all contributions to a member (or to his widow if his death occurs whilst still a member) where he ceases to be a member and has not become entitled to receive a pension; and where the provident fund is insufficient for the payment of pensions under the Act, the insufficiency being met out of moneys provided by Parliament.

**Liquor.**—No. 34 provides for the holding of a referendum on the question of which of 6 p.m., 9 p.m., or 10 p.m. will be the closing hour of licensed premises. The Licensing Court is reconstituted so that the chairman will be a District Court Judge and the other two members Stipendiary or Police Magistrates. Provision is made for the selling of liquor in any canteen at any construction camp or works of a public nature, provided, upon the recommendation of the Licensing Court, a permit has been issued by the Minister. Certain restrictions are relaxed relating to the removal to other premises of a publican's or a spirit merchant's or an Australian wine licence. The holder of a publican's licence is directed to serve liquor for consumption on the premises in a container sized to hold 10 or 15 or 20 fluid ounces as specified by the purchaser, and it is prescribed that containers used for spirituous liquor shall be marked so as to indicate the full fluid ounce measure. Authority is conferred on the Licensing Court to issue permits for the

sale of light wines and malted liquors in approved restaurants between the hours of 12 noon and 2.30 p.m. and between 6 p.m. and 8.30 p.m. The Council of a city, municipality or shire is authorized to conduct the business of the holder of a publican's licence on premises situated within its area. Club licences may also be issued by the Licensing Court.

**Local Government.**—No. 47 inserts in the principal Act a new provision limiting the circumstances under which a servant, who, following an alteration of areas, is transferred to the service of the new Council and resigns, or whose services are terminated by the new Council, may obtain a gratuity. Henceforth the gratuity will be payable only if the employment of the servant is terminated by the Council of the new area (otherwise than for misconduct) within a period of two years, or if the servant resigns and the Council has failed to offer in writing within a year of the transfer continuous employment at a salary or wage equal to that enjoyed by such servant at the date of transfer. Machinery is provided for the transfer of servants where a number of areas are divided into two or more areas.

**Lunacy.**—No. 38 amends the principal Act so as to permit the Minister to order the removal of a patient from a hospital for the criminal insane to an ordinary mental hospital. Previously, the Minister had to decide whether any insane person coming within the scope of the section in question should be placed in an ordinary mental hospital or in a hospital for the criminal insane. Once having exercised his discretion in this respect the Minister could not reverse his order. Provision is also made that in the case of a person who is charged with an offence and who has not been tried but has been detained in a hospital for the insane or criminal insane, and the Attorney-General is of the opinion that the question whether the patient is fit to plead if put upon his trial should be determined by a jury, the Attorney-General may direct that the patient be removed from the hospital to some gaol and subsequently appear before such jury. If the jury find that the patient is not fit to plead, he shall be returned to the hospital from which he was removed. If the jury decide he is fit to plead, he shall be returned to the gaol and in the event of a bill being found against him, placed on trial. Should a bill be not found against him, a Judge of the Supreme Court may direct the gaoler in whose custody the patient may be to discharge him from custody.

**Mining.**—No. 53 removes the limitations on the number of renewals that may be granted of a mining lease and prescribes that each extension shall be for such period not exceeding twenty years as the Governor may approve. It is also provided that leases of private lands in which the minerals are privately owned may be renewed on similar conditions as to royalty as those applicable to leases of private lands containing minerals owned by the Crown.

**Obscene and Indecent Publications.**—No. 36 extends the definition of " obscene " to include any picture, paper, newspaper or printed matter of any kind and any writing, print, picture, photograph, lithograph, drawing or representation, if in the opinion of the court before which any proceedings are taken, it would tend to encourage depravity or would tend to injure the morals of the public or of any class or section thereof. An exception, however, is made in respect of bona-fide medical works, objects of art and literary works. Any advertisement relating to contraception or contraceptives shall be deemed to be an indecent advertisement. Publication is also restricted of reports of judicial proceedings to the extent that any matter or details, the publication of which would tend to encourage depravity or injure morals, shall not be printed or published.

**State Brickworks.**—No. 16 enables the Minister for Public Works to establish, control and maintain State Brickworks the functions of which will include the production, distribution and sale of all classes of bricks. Provision is made for the appointment of officers and employees who are to be subject to the Public Service Act, 1902. The Minister may also appoint, employ and dismiss casual

employees and fix their wages and conditions of employment where they are not prescribed by any other Act. Resumption and appropriation of land is to be carried out under the provisions of the Public Works Act, 1912, and where land, upon which any brickworks are situated, is resumed, all plant, equipment and machinery capable of being used in the manufacture of bricks shall be included in the resumption. Rules are provided for the assessment of compensation and in the event of disagreement between the parties the question shall be determined by the Land and Valuation Court whose decision will be final and conclusive.

**Theatres and Public Halls.**—No. 27 rectifies certain anomalies in relation to the building of theatres for the screening of films, alters the manner of dealing with applications for licences and revises the grades and licence fees in respect of theatres and public halls generally. Provision is made for the grant of licences and the lodgment of plans and specifications in respect of proposed theatres and public halls. All provisional approvals of plans and specifications for proposed theatres for the showing of films shall lapse at the expiration of six months from the date of commencement of this Act or such longer period as may be allowed by the Minister on the recommendation of the Theatres and Films Commission. Any class of film not exceeding 2,000 feet in length may be screened in an existing newsreel theatrette although the licence does not carry the prescribed endorsement. The renewal of an endorsement on a licence issued in respect of a public hall may be refused where it can be shown that the licensee is not utilizing such endorsement or is not giving satisfactory service to the public. The determination in this connection is to be made by the Commission subject to appeal to the District Court. The Commission is authorized to make it a condition attaching to the grant of an application that the building concerned will be used within a specified period for the exhibition of films and that when an application is refused, no further application in respect of the same Municipality or the same Riding of a Shire shall be considered until after the expiration of 12 months unless the refusal resulted from a technical informality.

**War Service Land Settlement.**—No. 26 authorizes the Minister under certain circumstances to restrict disposal of land for war service land settlement to members or discharged members of the Forces whose war service has been of a particular class or nature.

This amendment is designed to enable the Government to give effect to the stipulation of the owner of a property in the Cootamundra district who agreed to make about 5,762 acres available for war service land settlement, and to apply the purchase money for the endowment of scholarships in the Faculties of Agriculture and Veterinary Science giving first preference to Servicemen or children of Servicemen, provided the Government undertook to restrict disposal of the land to Servicemen who had had front-line service.

**Workers' Compensation.**—No. 41 relieves the silica hazard industries from bearing the full burden of maintaining the Workers' Compensation (Silicosis) Fund by distributing the cost of silicosis compensation over all industries by way of contributions by insurers and self-insurers in such amounts as the Premiums Insurance Committee deems equitable after having regard to all the circumstances.

## 3. QUEENSLAND

[*Contributed by* J. E. Broadbent, Esq., B.A., *L.S.O. Parliamentary Counsel and Draftsman of Queensland.*]

The Session of 1945 was adjourned on November 29, 1945, and Parliament sat from March 12, 1946, to April 12, 1946. During this adjourned session 23 Acts were passed. Hereunder is a summary of the more important legislation passed during that period.

**Picture Theatres and Films.**—No. 12 provides for the regulation and control

of certain matters relating to the distribution and exhibition of Films, and for that purpose to constitute a Picture Theatres and Films Commission.

The object underlying the measure is to provide a means of check against undue competition and economic waste in the public interest by the erection and operations of new Picture Theatres.

The Commission shall be appointed by the Governor-in-Council and shall consist of three members. A person shall not be qualified as a member if he has any pecuniary interest in the production, distribution or exhibition of films. Moreover the office of a member who acquires such pecuniary interest shall become vacant.

The Commission shall investigate and report upon any matter referred to it by the Minister concerning the production, distribution and exhibition of films. For this purpose it shall have the powers of a Commission under the Official Inquiries Evidence Acts.

A Local Authority (including the Brisbane City Council) shall not issue any licence in respect of the use or intended use as a picture theatre of (i) any building or enclosure or other premises, or (ii) any projected building or premises, unless (i) such building or premises was in use as a picture theatre and licensed at the commencement of this Act, or (ii) the Commission determines that the use or intended use of such building or premises is warranted.

Provisions set forth the procedure in making application for a determination of the Commission that the use or intended use of a building or premises is warranted.

An objection may be made on the ground (i) that the use of an additional picture theatre is not required for the accommodation of the people in the locality which would be served by the picture theatre; that the picture theatres for the time being in use adequately and properly provide for the requirements of the locality; and generally that it is not in the public interest.

It shall be a condition of the determination that the applicant shall on or before a prescribed date or extended date cause the building or premises the subject of a determination to be brought into use as a picture theatre.

If the Commission decides in favour of an additional picture theatre the successful applicant must conform to all the by-laws of the Local Authority concerned, and hence is fully subject to such Local Authority Acts and By-laws. The Local Authority shall however have no power to refuse to issue a licence on any grounds of objection which may have been taken before the Commission made its determination.

Certain provisions of the Cinematograph Films Hiring Agreement Act of 1930 (repealed by this Act) have been re-enacted. These deal with the provisions as to the right of the exhibitor to reject films, and provision for the Standard Form of Contract in relation to the hiring of films. Power is likewise given to the Director to set up a system of registration of contracts for the hiring of films.

A new feature however gives power to the Commission to settle disputes between distributors and exhibitors. The decision shall in respect of the facts, if any, in dispute be final and without appeal to any court or tribunal whatever.

**Price of Land Control.**—During the war no perpetual lease town, suburban, or country allotments were offered for sale at auction, owing to various reasons. However, early in 1946 it was decided to offer again such allotments at auction. Certain prices realized were absurdly high, and with a view to ensuring a degree of economic stability, it was decided to amend the law by fixing a "ceiling price."

No. 13 accordingly provides that the notification of sale in respect of the offering for sale of any town land, suburban land, or country land (all being under perpetual lease tenure) may state in respect of the land offered for sale or specified lots thereof, the amount of the maximum capital sum at which the bidding shall cease.

In the event of two or more persons bidding the maximum capital sum, the successful purchaser shall be determined by lot.

The measure extends to land sales where the notification thereof has been published but where the sale has not actually taken place.

Certain jurisdiction of the Land Court, and Valuation Courts dealing with fixation of rent, and valuations has been preserved and declared not to be prejudiced or affected by this measure.

**War Service Land Settlement.**—The object of No. 23 is to make provision for and in relation to the settlement on the land of discharged members of the Naval, Military or Air Forces and other eligible persons and to amend the Land Acts for that purpose.

The measure supplements the War Service Land Settlement Acquisition Act of 1945, and the War Service Land Settlement Agreement (with the Commonwealth) Act of 1945.

Part II of the Act deals with Land Settlement. It is provided that the Act other than Part III (dealing with financial arrangements) shall be administered by the Minister for Lands. In the administration thereof with respect to an "approved plan of settlement" as provided in the War Service Land Settlement Agreement Act of 1945, the Minister shall have regard to the provisions of that Act and the Agreement between the Commonwealth and the State approved thereunder.

A discharged member of the Forces may apply to participate in land settlement not more than five years after (*a*) August 15, 1945, or (*b*) the date on which he ceased to be on war service, whichever date is the later.

The Minister may appoint a classification committee of three persons, one of whom shall be chairman. One of such members shall be a person experienced in farming and also a discharged member of the Forces. The duty of the committee is mainly to ascertain the eligibility of the applicant for aid in land settlement or in rural training.

The Minister with the approval of the Governor-in-Council may by notification in the *Gazette* set apart any Crown land to be open for selection as perpetual lease selections by eligible persons approved for settlement. Before any portion of land is notified to be open for selection, the Minister shall determine by ballot the approved eligible person to whom the portion shall be allotted; such person shall upon the opening of the portion for selection be entitled to priority of application.

Certain provisions are applicable to every perpetual lease applied for or held under this Act: (i) it shall not be necessary for the approved eligible person to deposit with his application any amount by way of rent or instalment of survey fee; (ii) during the first fifteen years of the lease the annual rent shall be a sum equal to one pound ten shillings per centum of the notified capital value; but rent shall not be payable by the settler during what is known as the "assistance period"; (iii) the annual rent for the second and each subsequent period of fifteen years shall be determined under the principal Land Act.

There are certain restrictions in relation to transfer, but after the expiration of the first ten years of the term, the lessee shall not be debarred from mortgaging, transferring or sub-letting the lease in accordance with the principal Act.

Part III deals with Financial Arrangements and is administered by the Treasurer. The Agricultural Bank, being the Corporation established under the Co-ordination of Rural Advances and Agricultural Bank Acts, is charged with the administration of the provisions relating to the making of advances to settlers under the Act. Such Acts are applied with modifications.

Advances may be made for any of the following purposes: (*a*) working capital; (*b*) paying for and making improvements on the land or adding to improvements already on the land; (*c*) purchase of live stock (including pigs) plant and equipment.

Special advances may also be made, but at no time shall the total advance or advances to any one settler exceed five thousand pounds.

**Rural Advances.**—To implement the Commonwealth Re-establishment and Employment Act of 1945 which was a comprehensive measure to provide for the re-establishment in civil life of members of the Forces No. 24 allows loans up to £1,000 in respect of agricultural occupations.

The Queensland Agricultural Bank is authorized to make an agreement with the prescribed Commonwealth Authority regarding these loans.

**Medical Profession.**—At the sittings of the Medical Assessment Tribunal (constituted under the principal Act of 1939) and which hears charges of misconduct against a medical practitioner, the duty of the Assessors by No. 27 is to advise the Presiding Judge as to what in their opinion is the proper determination of any question of fact which may arise in any matter before the Tribunal. For this purpose the Assessors may question a witness and discuss such questions of fact with counsel for the parties.

**Vagrants Gaming and other Offences.**—No. 28 is a further outcome of certain recommendations made by a Committee of Inquiry appointed by the Governor-in-Council to inquire into sexual offences and other kindred matters. The intention of this Act is to afford a method of protection for children attending Picture Theatres.

Separate seating accommodation must be provided for children under the age of fourteen years when unaccompanied by parent, adult relative, guardian or person over the age of fourteen years.

Licensee or employee of the licensee may apprehend any offender and detain him until he is handed over to the Police.

The provisions may be extended to entertainments or places of amusement other than picture shows.

**Fruit Tree Standards.**—No. 22 is part of a Commonwealth-wide scheme to deal with fruit tree standards and the registration of nurseries.

It is laid down that no person shall buy or sell or offer or attempt to buy or sell in Queensland fruit trees or fruit plants unless same are free from disease, or have been grown by a registered nurseryman, and unless they are properly labelled.

Due provision is made for the examination of imported fruit trees and plants. Provision also deals with the proper labelling with prescribed particulars.

No person shall grow in the State fruit trees other than fruit trees for his own use unless he is a registered nurseryman.

**Poultry Industry Act of 1946.**—This measure is a complete consolidating and amending Act bringing the existing legislation up to date while at the same time it preserves essential provisions therein with improvement as administration has shown necessary.

A new feature is the constitution of a Poultry Advisory Board for the purpose of assisting in the development of the poultry industry. This Board which is appointed by the Governor-in-Council and representative of the Department of Agriculture and Stock and representatives of the industry will have power to advise the Minister upon matters relating to or arising out of the investigation of problems of production, assist him in experimental work, and make recommendations respecting the administration of the respective schemes under the Act for the accreditation of poultry breeding establishments and hatcheries.

Provision is made for the registration of " stock suppliers " and the keeping of the necessary Register.

A " stock supplier " is any person who carries on, either alone or in connection with any other business, the business of (i) hatching chickens for sale; or (ii) supplying fowl eggs for hatching; or (iii) a poultry dealer or all or any two of such businesses.

The Under-Secretary may on compliance with prescribed conditions register

any holding or premises of any stock supplier as an accredited hatchery or accredited breeding establishment or both.

As in the existing law, persons may be licensed as qualified to determine the sex of day-old chickens.

Usual inspection and quarantine powers.

Wide power is given to the Governor-in-Council to make regulations. An additional feature is that regulations may be made controlling and regulating the slaughtering of poultry and for the licensing of poultry slaughter-houses.

**Local Government Acts Amendment Act of 1946.**—A machinery measure applying the principles of the State Electoral laws to local government elections so far as the exercise of the franchise by members or discharged members of the Forces, or merchant seamen or discharged merchant seamen are concerned.

These persons may vote either at the poll in the usual way or by postal vote.

The Local Authority may in its discretion cause separate ballot papers to be printed—one for the election of mayor or chairman—one for the election of aldermen or members.

If however the Local Authority print only one ballot paper for the two classes, and there is an informality in one class but not in the other, the whole ballot paper is not rendered informal but only that part in which the informality occurs.

**Auctioneers and Commission Agents Acts Amendment Act of 1946.**—This will permit the Queensland Court to grant a general auctioneer's licence in Queensland to a resident of a reciprocating State who holds in that State a general auctioneer's licence. This will facilitate business at the border of this State and New South Wales.

**Legal Practitioners.**—S. 5 of the principal Act of 1938 provides that a barrister shall not be entitled to practise as a solicitor and a solicitor shall not be entitled to practise as a barrister.

There are certain Crown appointments such as Crown solicitor, Assistant Crown solicitor and solicitor to the Public Curator which have been in existence for some time and where a barrister has acted in these positions.

Doubts having arisen, No. 16 excludes from the above provision a barrister or solicitor in any Commonwealth or State Department acting in the course of his official duties. His rights are also preserved.

**Industrial and Provident Societies.**—The limitation of a member's maximum financial interest in these societies (which are co-operative in nature) is increased by No. 50 from £100 to £300.

No member of a society shall be bound by any alteration made in the rules of the society after the date of his membership if such alteration increases his financial liability; but the provision does not apply if such member agrees to be so bound.

Provision is also made for the registration of a society consisting of a Federation of societies. This new society is supervisory, may act in prosecutions, and promote and provide facilities for the education and training of officers. Further facilities are given for the amalgamation of societies.

**Legislative Assembly.**—There is a disqualification in the existing law of the holding of certain pensions and offices of profit in respect of a member's election or sitting in Parliament.

Certain military positions and military pensioners were exempted. Doubts having arisen, the law has been made uniform in this regard.

It is provided by No. 14 that the disqualification shall not apply to any person, otherwise qualified: (i) who is in receipt of a pension:

(*a*) as an officer or member of a Naval, Military or Air Force of the Commonwealth or United Kingdom or of any part of His Majesty's dominions;

(*b*) being a female on account of having served in any capacity with or with any service forming part of the Forces or as medical practitioner, nurse, masseuse or otherwise;

(ii) who is in receipt only of daily pay as an officer or member (male or female) of any such Forces and is not employed permanently or at an annual salary as such officer or member.

The measure also provides that where a Member of the Assembly has been adjudged guilty of contempt and has been punished by way of fine, then if the fine is not paid within the time specified in the order:

1. The Speaker shall deliver a certificate to the Treasurer notifying that the fine has not been so paid or only partly paid.
2. The Treasurer by virtue of the certificate may order that such sums be set aside from the amount payable to the Member as a Parliamentary allowance until the fine has been liquidated.
3. Any such order may be varied from time to time.
4. The moneys set aside shall be paid into consolidated revenue.

The above provisions apply as well to any such resolution made before the passing of this Act as to an order made after its passing. The powers under the Act are in addition to and not in derogation of the existing Constitution Acts dealing with the powers and privileges of Parliament.

**Aboriginals.**—Where an admission or confession has been obtained from an aboriginal charged with a criminal offence under No. 21 the confession will not be admissible unless on inquiry from the aboriginal in Chambers and in the presence only of the Judge, Crown prosecutor, and defendant's counsel, the Judge is satisfied that the aboriginal understood the meaning of his confession and that his statement was obtained voluntarily and without duress or pressure.

## 4. SOUTH AUSTRALIA

[*Contributed by* E. L. Bean, Esq., C.M.G., M.A., LL.B., *Parliamentary Draftsman.*]

In 1946 the South Australian Parliament passed fifty-two Acts. They may be described as a farrago of the usual kind—laws regulating the economic life of the community, laws providing and extending social services and assistance to industry, laws concerned with the physical development of the country, and the annual crop of minor amendments to and extensions of existing Acts.

Particulars of the more important Acts are as follows:—

**Banking Companies.**—In view of the passing of the Commonwealth Banking Act, 1945, the South Australian Parliament by Act No. 21 repealed the State Banking Companies Act. All the provisions of this repealed Act were covered by the Commonwealth Act.

**Building Materials.**—No. 14 extends to November 1, 1947, the operation of the Building Materials Act, which provides for the control of the use of building materials.

Formerly the control applied only to materials used in the building of dwelling-houses costing more than £1,000. The amending Act provides that the control will apply to materials used in a house costing more than £150, if the house is not intended to be occupied by the owner.

The Treasurer of the State is empowered to expend £50,000 in the provision of temporary housing and, where military camps are used for this purpose, the Treasurer is given power to acquire compulsorily the land upon which the camps are situated.

**Bush Fires.**—No. 33 enables a district or municipal council whose area abuts the boundary of another State to make reciprocal arrangements with a local government authority in that other State for the appointment of fire control officers who will have authority to combat bush fires spreading from one State to the other State. The Act also provides that councils are to insure, against accidents

causing death or incapacity, unpaid members of the crews of trailer-pumps used by councils for fighting bush fires.

**Dairy Produce.**—No. 17 declares that the Dairy Produce Act, formerly a temporary Act, will be permanent. The general object of the Act is to allocate to each manufacturer of butter and cheese a share of the local market (in normal times more lucrative than the export trade) and to ensure that anyone who oversells the quota allotted to him on the local market will pay his excess receipts into a price equalization fund.

Act No. 17 also increases the size of the Dairy Produce Board so as to give greater representation to cheese manufacturers.

**Dog Fence.**—No. 34 provides for the creation of a board to establish a dog-proof fence across the northern part of the State so as to prevent the ingress of wild dogs into the pastoral and agricultural areas

The fence, so far as may be, is to consist of existing dog-proof fences but, where necessary, occupiers of land may be required to construct additional fences so as to provide a continuous fence. The board is empowered to impose an annual rate on pastoral lands south of the fence. The rate on land more than ten miles from the fence must not exceed 1s. 3d. per square mile. On land within ten miles of the fence the maximum rate is 2s. 6d. a square mile.

The board will pay to owners of the fence an amount not exceeding £8 per mile of fence and the amount is to be applied to the maintenance of the fence and the destruction of wild dogs in its vicinity. The board is to inspect the fence and to ascertain whether the owners are maintaining it and may remedy any such omission.

**Drought Relief.**—No. 1 empowers the Minister of Agriculture to make a grant of money to any primary producer who suffered loss through drought in the year 1945. Grants are protected against the creditors of the farmer. The financial arrangements are that in the first instance a grant will be paid out of cash in the hands of the Treasurer, and debited to a suspense account. If subsequently any money is received from the Commonwealth for drought relief, that money must be used to recoup the Treasurer for the amount of any grants. Otherwise the grants will be paid out of the general revenue of the State.

**Economic Stability.**—No. 52 provides that if any of the Commonwealth National Security Regulations dealing with Prices, Landlord and Tenant, Capital Issues and Economic Organization (other than the wage-pegging regulations) should cease to be in force as Commonwealth law, they may be proclaimed by the State Governor as State law.

It also provides that until December 31, 1947, the Commonwealth basic wage for the time being in force may be declared by the Governor to be the State living wage under the Industrial Code, 1920–1943.

**Education.**—No. 22 provides that the Governor may appoint a Deputy Director of Education who will have power to act for the Director whenever for any cause the Director is unable to act in his office. The Act also empowers the Governor to make proclamations raising the school leaving age from the present statutory level of fourteen years, to any age not exceeding fifteen years. It also provides that a child cannot leave school in the middle of a term solely because he has attained the school leaving age.

**Electricity Trust of South Australia.**—No. 3 and No. 25 establish an Electricity Trust with power to generate and sell electricity throughout the State. The Trust consists of five members appointed by the Governor and holds its assets for and on account of the Crown. In conducting its operations, however, it is not subject to Ministerial control. Members of the Trust hold office for five years, subject to the rule that one of the first members of the Trust retires in each year throughout the first four years.

By Act No. 3 of 1946 the undertaking of the Adelaide Electric Supply Company, with the exception of the assets outside South Australia, was vested in the

Trust. The Directors were given the option of assigning the assets outside South Australia to the Trust; and it was provided that if they did not assign them the compensation would be reduced. The Directors refused to assign them, and following this, Act No. 25 of 1946 was passed, which compelled the shareholders of the Company to surrender their shares to the Trust on or before a proclaimed day in order to obtain compensation. Thus the Trust will become the sole shareholder of the Company and will be in a position to control all its assets, both local and overseas. By way of compensation the principal Act provided that the shareholders were to receive the market value of the shares as at August 1, 1945. By the amending Act, No. 25 of 1946, in consideration of the surrender of their liquidation rights it was provided that ordinary shareholders should receive an additional 1s. 6d. per share. By the amending Act it was also provided that the Electricity Trust should take over the operation of the Leigh Creek Coal Field—large deposits of sub-bituminous coal 340 miles north of Adelaide.

**Eyre Peninsula Land Purchase.**—No. 6 empowers the Minister of Lands to purchase for settlement some large areas of land on Eyre Peninsula. When purchased, the land may be prepared for settlement, allotted and otherwise dealt with under the Crown Lands Act, the Crown Lands Development Act and the War Service Land Settlement Act.

**Fisheries.**—No. 18 provides that companies engaged in the business of fishing must take out the licences prescribed by the Fisheries Act and (consistently with the law which now provides that professional fishermen should be British subjects) that licences are to be granted only to companies established under British law.

**Friendly Societies.**—No. 8 increases from £100 to £200 the amount for which the life of a member of a friendly society may be insured by the society, subject to the limitation that the same person may not be insured by two or more societies or branches to an aggregate amount exceeding £300.

This Act also provides that when a member subscribes for hospital benefits and the full amount for which he has subscribed is not payable in respect of hospital expenses incurred by him, the society may pay the balance of the amount to the member. This provision has been rendered necessary by the Commonwealth Hospital Benefits Scheme. As a result of the subsidies given under that scheme members of friendly societies will in some cases not be able to receive from the society the full amount of hospital benefits for which they have contributed.

**Irrigation.**—No. 37 enables the Minister to make an advance of up to £1,000 to the lessee of an irrigation block for the purpose of the erection of a dwelling-house to be used by the lessee, a member of his family, an employee, or a share-farmer. Any such advance may be made up to nine-tenths of the value of the security.

**Rent Control.**—No. 38 extends to December 31, 1947, the operation of the Landlord and Tenant (Control of Rents) Act under which rents are controlled in South Australia. The provisions of the Commonwealth National Security (Landlord and Tenant) Regulations relating to rent control do not apply in South Australia.

**Loans to Producers.**—No. 15 enables the State Bank to make loans to individuals and bodies corporate for the purpose of enabling the borrower to procure ships, machinery and plant for catching, storing, canning, processing and marketing fish. The State Bank may require for any loan such security as it deems proper.

**Local Government.**—No. 16 provides that only British subjects are to be eligible for election to municipal and district councils or to vote at council elections and polls.

It also enacts that any appeal by a town or district clerk against his dismissal by the council employing him is to be heard by the President of the Industrial Court instead of by the board previously set up for the purpose.

A board is established to classify salaried officers employed by councils and to fix the minimum salaries payable to these officers.

Provision is made for the alignment of streets and roads and for the making of any necessary and consequent adjustments to the boundaries of land abutting those streets and roads and the correction of the certificates of title to such land. A considerable number of other amendments of an administrative character are also made to the Local Government Act.

**Maintenance of Children.**—The object of No. 40 is to enable the Government to extend the term of supervision and control of State children. State children are children under eighteen years of age who have been committed to Government institutions because they have been convicted of crime, or neglected by their parents. Under previous law no male State child could be detained in an institution after eighteen years of age, although a female could in special circumstances be detained till twenty-one. The amending Act provides that males also may be detained until the age of twenty-one by Special Order of the Governor.

**Medical Practitioners.**—No. 41 enables the Medical Board of South Australia to register as a medical practitioner any person who on October 1, 1946, held a licence under the National Security (Alien Doctors) Regulations of the Commonwealth, and was during that month practising medicine in the State.

**Metropolitan Milk Supply.**—No. 42 provides for the regulation and control of the milk supply of the metropolitan area of Adelaide. The basic principles of the Act are: (*a*) the creation of an independent board to administer the Act; (*b*) the licensing and control of the dairymen who produce whole milk and sweet cream for the metropolitan trade; (*c*) the licensing of milk treatment plants and wholesale and retail milk and cream vendors inside the metropolitan area.

The general object of the licensing of dairymen is to secure hygienic conditions on their farms and also to regulate the entry of additional dairymen into the Adelaide whole milk trade. The object of licensing treatment plants and vendors is to secure proper standards of premises and plant and purity of milk. Milk coming to metropolitan factories in specially marked cans for manufacturing purposes is exempt from the Bill.

The board is empowered to fix prices for milk and cream and also quotas for wholesalers—i.e. the proportion of his total milk which a wholesaler may sell as whole milk.

**Mining.**—No. 11 alters the basis on which the royalties payable to the Crown under the Mining Act are computed. Formerly the general rule was that a mining lessee paid royalty at the rate of sixpence in the pound on the net profits obtained from the occupation and working of the land comprised in his lease and from the sale of the minerals or other products obtained therefrom. Act No. 11 provides that royalties will, in future, be computed at the rate of 2½ per cent. on the gross amount realized from the sale of the metals, precious stones, minerals and other substances obtained from the lease.

**Physiotherapists.**—No. 43 provides that a person who before the passing of the Physiotherapists Act, 1945, was administering physiotherapy either as a principal or employee, for fee or reward, paid either to himself or any other person, will be deemed to have been practising physiotherapy for fee or reward within the meaning of that Act.

The effect of this is to allow certain employees of physiotherapists, not otherwise eligible, to be registered under the principal Act.

**Police.**—No. 44 makes a number of amendments to the Police Act—mainly to the provisions creating what are usually called police offences. The penalties for bribing and impersonating the police are increased. The law as to drunkenness is simplified. It is made an offence, punishable summarily, to attempt to escape from the lawful custody of a member of the police force or a police prison.

The use of obscene language in a police station is penalized. A new section providing for the punishment of persons unlawfully interfering with boats or ships

or their gear is enacted. A number of archaic expressions in the principal Act are removed and the language describing certain police offences is simplified.

**Public Service.**—S. 4 of No. 30 provides that outsiders are not to be appointed to positions in the Public Service unless the Public Service Board certifies that there is no one in the Public Service capable of doing the work. Formerly any such certificate had to be given by the Public Service Commissioner.

S. 5 provides that all appointments in departments are to be made by the Governor or the Minister under the Public Service Act and not by other persons or authorities. The object of this section is to override several other statutory provisions which confer on heads of departments and boards the power to make appointments in their Departments.

The next important matter dealt with is in s. 8, namely, the appointment of returned servicemen. S. 8 provides that if a returned serviceman as well as another person is an applicant for a position in the Public Service, the Public Service Commissioner cannot recommend a person other than a returned serviceman, unless the Public Service Board has certified that in its opinion a reasonable and substantial cause exists for not appointing the returned serviceman.

Provision is also made for paying the monetary equivalent of long service leave to the personal representative of a deceased public servant who has died without dependants, and without taking the leave to which he is entitled.

**Railways Standardization Agreement.**—No. 31 authorizes the State of South Australia to enter into and execute an agreement, in the form set out in the Act, with the Commonwealth, New South Wales and Victoria for the standardization (at 4 feet 8½ inches) of the railway gauges of those States and of South Australia and of certain Commonwealth railways.

The Agreement provides for each State to be the constructing authority for standardization works within its own boundary. Finance will be found in the first instance by the Commonwealth but the States will be liable to repay to the Commonwealth over a fifty year period the States' share of the expenditure which, generally speaking, will be one half.

**Registration of Business Names.**—No. 23 requires a registered firm, the members of which do not reside in South Australia, to nominate a resident in South Australia upon whom notices and legal process may be served.

The registration of a new business name containing such words as "Royal," "King," etc., is prohibited.

Where a firm or individual advertises under a business name and gives an accommodation address in the advertisement the firm or individual is deemed to carry on business at that address and, as a necessary consequence, the business name must be registered.

Amendments are also made to the provisions of the Act dealing with the powers of the Registrar of Companies as to the striking off of business names from the register when the business in question has ceased to be carried on.

**Sewerage.**—No. 48 deals with proposed country sewerage schemes. The Minister of Works and his officers are empowered to enter on any land, whether within or outside an existing drainage area, to obtain data for preparing sewerage schemes.

If sewerage is provided in a country town the ratepayers must pay a minimum sewerage rate of £2 12s. a year on land with buildings connected with the sewers, and 12s. a year in any other case.

Subject to the minimum charge, the rate for a country sewerage scheme is declared to be 1s. 9d. in the pound.

**Superannuation.**—No. 50 provides that contributors to the Government Superannuation Fund shall have the option to subscribe for a smaller number of pension units than those previously required to be taken up, and that daily paid employees may elect not to become contributors.

The Act also provides that regulations may be made prescribing the conditions

under which officers of the Commonwealth Public Service or the Public Service of another State, who join the Public Service of South Australia, may become contributors to the Superannuation Fund.

**Swine Compensation.**—No. 20 provides that where swine die because of any of the diseases set out in the Swine Compensation Act and the cause of death is certified by an inspector, the owner is to be entitled to compensation under the Act. Previously, such compensation was payable only when the infected swine were destroyed on the order of an inspector.

**Trustees.**—No. 24 amended the Trustee Act so as to provide that debentures issued by the Electricity Trust of South Australia shall be trustee securities and may be purchased by trustees at a price above par notwithstanding that they are liable to be redeemed within fifteen years of the purchase.

**University of Adelaide.**—No. 9 enables the Treasurer, with the approval of the Governor, to guarantee repayment by the University to the Commonwealth of moneys advanced by the Commonwealth for extending the buildings and plant of the University.

**Wheat Industry Stabilization.**—No. 51 was enacted to provide for carrying out a proposed joint Commonwealth and State Wheat Marketing and Price Stabilization Scheme. It provided that farmers had to deliver their wheat to the Commonwealth Board, and established a State Wheat Industry Stabilization Committee to license wheatgrowers, register wheat farms and control acreage.

The Act, however, could not come into operation unless a majority of wheatgrowers voted for it at a poll. The poll was held last year and the growers voted against the Act.

## 5. TASMANIA

[*Contributed by* R. G. Osborne, Esq., *Parliamentary Draftsman.*]

The Acts passed in 1946 consisted of Nos. 46 to 71 of the session 9 & 10 Geo. VI, and all the Acts (53) of the session 10 Geo. VI. Of the Acts passed during the year, 10 were mainly financial, 12 local, and 16 contained only administrative amendments of no general importance. The amendments of the Constitution Act, with respect to the constitution of the Legislative Council, are of some importance, as is indicated in the summary of the Act. Housing shortages and allied problems again occupied the attention of the legislature and some remarkable legislative steps were taken to deal with the emergency which is unfortunately universal. These include the compulsory letting of unoccupied premises, the provision of temporary housing accommodation, the compulsory acquisition of building allotments required by ex-Servicemen and a vigorous approach to the problem of " squatting " (see below under " Trespass to Lands " Act, 10 Geo. VI, No. 18). Important changes in forestry administration are contained in Act 10 Geo. VI, No. 42, which establishes an independent statutory corporation to discharge the functions of the Forestry Department, including the control of the exploitation of the forest and its conservation and regeneration.

**Constitution.**—No. 48 contains important alterations of the Constitution of the Parliament of the State which may be summarized as follows:—

(*a*) The provisions relating to the qualifications of members of the Legislative Council are altered by reducing the minimum age from 30 to 25 years.

(*b*) The number of members of the Legislative Council is increased from 18 to 19.

(*c*) Consequential alterations are made in the provisions for periodical elections of members of the Council.

(*d*) The electoral divisions for the Legislative Council are revised. One division is added. Divisions formerly returning more than one member are subdivided into new divisions returning one member only, and the boundaries of divisions are altered so as to coincide as far as possible with boundaries of municipal areas.

(*e*) The qualifications of electors for the Legislative Council are altered in several important respects—(i) occupier franchise is reduced from £30 annual value to £26, and the occupation of premises by an employee as such as to constitute qualification for enrolment; (ii) the members of His Majesty's Forces who served outside Tasmania in the war which commenced on September 3, 1939, including Women's Services, are to be entitled to enrolment; (iii) no person is to be entitled to enrolment in more than one division.

The Act was passed after considerable controversy between the Government and the House of Assembly and the Legislative Council. The Government has a substantial (Labour) majority in the House of Assembly (20 out of 30 seats), but has only two representatives in the Council, and has repeatedly claimed that the Council not only obstructs the passage of important social and economic measures, but that, as a result of the restricted franchise and antiquated system of electoral divisions, it is also totally unrepresentative. The Act as passed represents a compromise, which is claimed by the members of the Council to be substantial, but is regarded by the Government as quite inadequate. It will be recalled that only three members of the Council retire in each year, and that the Council cannot be dissolved. Persistent efforts have been made by the Government to secure the passage of some amendment of the Constitution Act designed to overcome difficulties and " deadlocks " between the two Houses, or to incorporate in the Constitution the provisions of the Parliament Act 1911, but so far without success.

**State Advances.**—No. 49 increases the maximum amount of loans which may be made by the Agricultural Bank of Tasmania to farmers and other producers.

**Ministers of the Crown.**—No. 51 provides for the appointment and payment of an additional Minister of the Crown, to be known as the Minister for Education.

**Homes.**—No. 52 greatly extends the powers of the Board of Management of the Agricultural Bank of Tasmania, which is the State housing authority under the Commonwealth and State Housing Agreement, to engage in and carry on any business or activity incidental to the erection of dwelling-houses or generally in relation to housing. It is intended that the Bank shall undertake the mass production of dwelling-houses.

**Industries Establishment.**—The object of Act No. 58 is to authorize the Minister, on behalf of the State, to enter into agreements relating to the establishment of new industries in the State (including the extension of existing industries), and to acquire and dispose of land, to make grants or loans of moneys, or to enter into any other transaction incidental to the establishment of the industry. Provisions are included for the compulsory acquisition of land for new industries, and for the disposal of land so acquired to persons establishing industries in the State. The powers of the Minister are not to be exercised except on the recommendation of an officer called the Director of Industrial Development, and the maximum expenditure from revenue is not to exceed £20,000. This Act forms an important part of the State's policy of industrial development.

**Lands Resumption.**—No. 59 provides for an appeal to the Supreme Court in respect of the valuation of land compulsorily acquired for certain purposes.

**Paper and Timber Mills.**—No. 64 is an important Statute conferring certain exclusive rights to cut and remove pulpwood and other timber in specified areas upon a company formed for the purpose of manufacturing woodpulp, paper and board. The pulpwood rights are limited to the cutting of not more than 37,000 cords in any one year, and the rights of the company in respect of milling timber are restricted to a relatively small cut. The Act contains detailed and comprehensive provisions relating to the terms and conditions under which the company is to cut and remove pulpwood, including the elaborate specification of the company's annual programme of operations, which is subject to almost daily supervision by the Forestry Department, and also makes provision for fire protection and for the conservation and the protection of the forest and the re-growth. The

forest resources of the State, though not unlimited, are considerable, and this is the third statute that has been passed for the purpose of conferring a substantial timber concession upon a paper-pulp company. Other large factories for the manufacture of paper have already been established at Burnie and Boyer (near New Norfolk) in this State, and this factory is proposed to be established at Launceston. The Act also confers on the company considerable rights in respect of water, effluent drains and tramways. The company's concession is for thirty years, subject to termination by the Governor if it is not effectively exercised, or if the company is twice convicted within three years of certain offences against the Act in respect of its cutting operations.

**Emergency Housing Accommodation.**—No. 66 is a drastic measure providing, in effect, for the compulsory letting of unoccupied dwelling-houses to persons requiring accommodation, and reflects the prevailing housing shortage. If the Director of Social Services is satisfied that any dwelling-house, without satisfactory reason, has remained vacant during the period of fourteen days or more, or is used only occasionally for residential purposes, or is not reasonably required by the owner for immediate use for residential purposes, he may serve on the owner a notice requiring him to let the dwelling-house to a specified person. In selecting persons to be specified in notices under the Act, the Director is to have regard to their character and suitability, and is to give priority to members or ex-members of the armed services and their dependants. The letting in pursuance of a notice is to be for the period specified in the notice, but not exceeding six months, and on such terms and conditions as the Director approves. If an owner fails to comply with the requirements of a notice under the Act, an application may be made to a police magistrate, who is empowered to order the owner to let the premises. The magistrate is required, before making any order, to take into consideration, in addition to all other relevant matters, any hardship which would be caused to the owner or any other person by the making of the order, and any hardship which would be caused by the refusal to make the order. Provision is made for the appointment of local advisory committees to assist the Director in the administration of the Act. The Act is limited in operation to a period of two years. It is an offence for a person to whom a dwelling-house is let in pursuance of the Act to use the premises otherwise than as a private dwelling, to deface or injure the premises, or to fail to keep or leave the premises in good repair.

**Primary Producers Relief.**—No. 67 authorizes grants of financial assistance to primary producers who have suffered loss as a result of drought, bush fires, frost, hail or floods in the years 1945 and 1946. The assistance is to be made available in accordance with the arrangements to be made between the Commonwealth and the State.

Act No. 3 of 10 Geo. VI removed the requirement contained in the principal Act that a means test should be administered to applicants for relief, and substituted a determination by the Agricultural Bank that the payment of relief is reasonable in the circumstances.

**Tourist Bureau.**—No. 5 alters the name of the Tasmanian Government Tourist Bureau to the Tasmanian Government Tourist and Immigration Department, and transfers to the new Department administrative responsibilities in connection with encouraging and facilitating the settlement of immigrants in this State. The new Department will work in co-operation with the Department of Immigration of the Commonwealth in implementing the recently announced immigration plans of the Commonwealth Government.

**Apprentices.**—No. 6 is of some interest in connection with recent developments on the question whether legislation is binding upon the Crown, and provides expressly that " employer " for the purposes of the Act (which regulates the terms and conditions of apprenticeship) includes any person, body or authority

constituted or appointed to administer or control any business or undertaking on behalf of the State, but does not include any department of the Public Service.

**Superannuation.**—No. 7 revises and increases the rates of contributions to the Public Service Superannuation Fund in the light of the actuary's report on the Fund. Contributions by the State are also increased by ten per cent.

**Homes (Temporary Housing Accommodation).**—No. 10 authorizes the Agricultural Bank to expend £50,000 in the erection of temporary housing accommodation for the purposes of providing housing accommodation for persons who are unable to obtain dwelling-houses for themselves and their dependants. The Bank is given complete discretion as to the expenditure required and the type of accommodation to be made available.

**Evidence.**—No. 11 extends the powers of diplomatic and consular agents in respect of affidavits or notarial acts taken or done outside the State. Where, by or under any Act, any oath, affidavit, or document is required to be administered by or made or signed before a commissioner for taking affidavits, or a justice of the peace, or where any notarial act is required to be done in any place outside the State for the purpose of being used in the State, it is to be sufficient if the oath, affidavit, document or notarial act is administered, made, signed or done before or by any of His Majesty's diplomatic or consular agents exercising his functions in that place.

**Railway Management.**—No. 12 authorizes the Transport Commission, which exercises the powers of the Commissioner for Railways under the principal Act, to carry on for a limited period the manufacture of metal products and business incidental thereto. The amendment is designed to provide for the continuation of the tool annexe attached to the railway workshops, which was successfully operated during the war for the purpose of producing machine tools and munitions.

**Housing Improvement (Powers of Approved Institutions).**—The object of Act No. 17 is to extend the powers of certain institutions (such as savings banks, building societies, &c.) to acquire and dispose of land and to erect and sell dwelling-houses. In certain circumstances the Government is to indemnify institutions against loss.

**Trespass to Lands.**—No. 18 is brief, but contains important alterations in the law relating to trespass, designed to enable prompt measures to be taken to deal with what have come to be known as "squatters." The original Trespass to Lands Act was passed in 1862, during the pioneering period in the development of the State, and provides that any person who, without reasonable or lawful excuse, enters upon the lands of another person without the consent of the owner or occupier thereof, or the person in charge of the same, shall be liable to a penalty of £2, and the proof of reasonable or lawful excuse is to be upon the person charged with any offence. Similar legislation was passed in other States, and the numerous decisions on this legislation, which are of some interest, may be consulted in 20 *Aus. Digest* 925 and following. The present Act increases the general penalty for unlawful entry on land from £2 to £5, and provides further that, notwithstanding anything contained in the principal Act, any person who is convicted of an offence against any Act in respect of an entry to a *dwelling* shall be liable to a penalty of £100 or six months' imprisonment. Upon conviction of any person for an offence against the Act in respect of an entry to a dwelling, the court may issue a warrant addressed to all police officers commanding them to enter into the premises and give possession thereof to the complainant. For the purpose of executing any warrant so issued every police officer is authorized and empowered, if necessary, to break and enter into the premises and eject the person convicted and any other person therefrom.

**Legal Practitioners.**—No. 19 reduces the period of articles required to be served by former members of the Forces as a qualification for admission as barristers and solicitors.

**Wheat Industry Stabilization.**—No. 2 was passed by the State Parliament in pursuance of the agreement between the Commonwealth and the States for the establishment of an organized marketing scheme for the wheat industry on a long-term basis, in continuation of the war-time arrangements for the control of the industry. The Commonwealth Act (1946, No. 24) and the State Acts represent an interesting development in the joint use by the respective Parliaments of their legislative powers so as to secure a result which would be beyond the legislative power of either. The effect of the State legislation is to confer extensive powers upon the Australian Wheat Board, constituted under the Commonwealth Act, in respect of the delivery and disposal of wheat grown in the State. Thus, so far as the State is able to regulate the marketing of wheat, it has done so by conferring powers upon the Commonwealth Board, which also has extensive powers vested in it by the Commonwealth legislation. An important part of the stabilization scheme is the registration of wheat farms and wheat growers, and the control of production. As neither of these matters fall within the legislative power of the Commonwealth, the necessary provision is made in the State Acts. It may be noted that the production of wheat forms a very small part of Tasmania's agricultural economy, but the legislation was passed in pursuance of a national scheme which required legislation to be passed by all States.

**Registration of Firms.**—No. 23 authorizes the Registrar to require the alteration of firm names which are identical with or closely resemble the name of any other firm registered under the Act, or the name of any company registered under the Companies Act, 1920.

**Wages Boards.**—No. 25 extends the provisions of the Wages Boards Act, 1920, by permitting the appointment to boards of representatives of associations of employees and employers respectively, and thus enabling officers of trades unions and employees' organizations to act, in effect, as advocates at meetings of boards. Provision is also made for conferring on trades union officials the right to enter any factory or shop or other premises for the purpose of interviewing employees in connection with the affairs of the union.

**Southern Regional Water Supply.**—No. 27 represents a new development in the construction and administration of water supply schemes. Authority is given to the Minister to construct a water supply scheme designed to meet the requirements of six municipal districts in the southern part of the State. The water is supplied to the municipalities in bulk, and the responsibility for reticulation is placed upon the municipalities. The scheme is administered by the Director of Public Works, who is constituted for this purpose a corporation sole under the name of "Administrator of the Southern Regional Water Supply." The provisions relating to the terms and conditions upon which water is supplied to the various municipalities are very complicated, and very generous provision is made for subsidies by the State to the respective municipalities in respect of costs of reticulation, &c.

**Medical.**—No. 28 authorizes the registration under the Medical Act of 1918, as medical practitioners, of certain alien doctors already practising in the State under the authority of the National Security (Alien Doctors) Regulations of the Commonwealth, passed for the purpose of co-ordinating medical services during the war.

**Electoral (War Service).**—No. 32 extends the franchise for the House of Assembly to members of the Forces who served outside the State in the war, and who have not attained the age of 21 years. The franchise for the Legislative Council had already been conferred on these persons by the Constitution Act, 1941, and by the Constitution Act, 1946, noted above.

**Hydro-Electric Commission.**—No. 33 authorizes the Hydro-Electric Commission to establish canteens for the sale of liquor to its employees in areas in which works of the Commission are under construction. No canteen is to be

established at any place within three miles of any premises licensed as an hotel or public house.

**Workers' Compensation.**—No. 34 repeals the schedule of rates of compensation in the principal Act and substitutes a new schedule, containing very greatly increased rates of compensation based on the scales operative in New South Wales and Victoria.

**Marketing of Primary Products (Field Peas).**—No. 35 was passed for the purpose of constituting a Field Peas Marketing Board under the Marketing of Primary Products Act, 1945, in substitution for the Field Peas Board constituted under the National Security (Field Peas Acquisition) Regulations of the Commonwealth. The object is to secure that the marketing scheme in respect of field peas established during the war will be continued until it is possible to take the necessary steps under the Marketing of Primary Products Act, 1945, for the establishment of a State marketing scheme under that Act.

**Homes (Acquisition of Land for Members of the Forces).**—Act No. 36 provides that a member or ex-member of the Forces who has made an offer to the owner of any land to purchase such land, or any part thereof which is capable of being sold as a separate allotment, may, if the owner has refused to sell the land or part thereof to him, apply to the Board of Management of the Agricultural Bank for the compulsory acquisition of the land on his behalf. The Board must be satisfied that the land in respect of which the application is made is required by the member of the Forces for the purpose of erecting a dwelling-house for himself and his dependants; that the owner of the land has refused to sell it at a fair and reasonable price and that no other suitable land is available at a fair price; that the land is not required by the owner for the purpose of erecting a dwelling-house thereon for himself or his family; and that the acquisition of the land would not for any reason be unjust or would not cause hardship to the owner. If the application is approved by the Board, the land is acquired under the Lands Resumption Act, 1910, but the compensation therefor is to be determined by summary proceedings before a compensation tribunal instead of by action or by arbitration. The basis of compensation is to be the value of the land as at February 10, 1942. This is the date at which, generally speaking, land values were pegged under the National Security Regulations of the Commonwealth made for the purpose of securing economic stability. (See National Security (Economic Organizations) Regulations.) If the land is acquired by the Board in accordance with the Act, the Board may sell the land to the applicant at cost. No person on whose behalf any land has been acquired under the Act is to sell the land within five years except with the consent of the Board. The Act operates only for one year, and is designed to meet the extraordinary situation in which prospective home builders are unable to purchase building allotments at pegged prices.

**Forestry.**—No. 42 establishes a Forestry Commission to discharge the powers and functions of the Forestry Department. The object is to substitute for departmental control with ministerial responsibility the independent statutory corporation not subject to ministerial direction, which has become a common feature in modern public administration. The Forestry Commission is to consist of a Chief Commissioner and two Assistant Commissioners. The Chief Commissioner is to be a person who has special knowledge and experience in all branches of forestry, one Assistant Commissioner is to be a person who has scientific attainments and a technical knowledge of forestry, and the other Assistant Commissioner is to be a person of practical business experience and executive ability. They are to hold office for five years, and are not to be removable except on a resolution of both Houses. The Commission is to keep the Minister continuously and fully informed with respect to all matters under the control of the Commission, and the Minister is to be entitled to require the Commission to supply any information which he thinks necessary, or to summon a special meeting of the Commission, and to attend any meeting and to obtain any information which he requires relating to

the operations of the Commission. Otherwise the Commission is not subject to any control or direction by the Minister, although it is declared to represent the Crown. The employees of the Commission will, however, be subject to the provisions of the Public Service Act, 1923. The Act also contains some machinery amendments of the Forestry Act, the most important of which is the provision authorizing the Minister on the recommendation of the Commission to reserve from sale areas of rural land suitable for re-afforestation.

**Derwent Park Ammunition Factory Purchase.**—Act No. 44 authorizes the Government of the State to purchase an ammunition factory from the Government of the Commonwealth, and dispose of the land and buildings for the purposes of industrial development.

**Crown Lands.**—The provisions of No. 52 are complementary to those of the Forestry Act summarized above, and provide for the prohibition of the sale of rural land under the Crown Lands Acts until a report has been received from the Forestry Commission, or in any case where the Forestry Commission reports that it is desirable that, by reason of the timber thereon, the land should not be sold.

## 6. VICTORIA

[*Contributed by* S. H. Z. Woinarski, Esq., M.A., LL.D.]

Great legislative activity marked the year 1946. Altogether 98 Acts were passed in what was officially the Second Session of the Thirty-sixth Parliament (Nos. 5109–5206). The large variety of subjects dealt with might well make an unsophisticated observer believe that the legislature had become aware of le Lolme's famous aphorism and taken it seriously. Most of the enactments bear directly on social or economic, or as some may prefer to say, political questions, and through all their multifarious provisions there is clearly to be heard a *vox subaudita* whispering that the great panacea has been found and that man's aspirations are to be attained by the words of a statute. The doctrine that self-respect and prosperity can be conferred upon humans from without rather than sought for and elaborated from within appears to be the dominant motif of the legislation. Twenty-four Acts are dealt with below.

**Factories and Shops (Annual Holidays).**—No. 5111 prescribes in substance a minimum annual holiday for workers. Worker is defined to mean any person employed by any employer to do any work for hire or reward and includes an apprentice, and employer includes the Crown. The Act requires employers to grant to their employees two weeks' holiday with pay after each year of employment. The benefits of this provision, however, do not apply to employees whose terms of employment are regulated by the Commonwealth Court of Conciliation and Arbitration or to employees who are entitled to more favourable benefits under a determination of a wages board or under the terms of their employment. Payment in lieu of the annual holidays is prohibited except where the employment is terminated before the employee has completed the year of employment, when a pro rata payment has to be made to the worker. Detailed provisions are made with respect to the granting of annual holidays; any dispute in connection therewith is to be referred to the Secretary for Labour whose decision is made final; employers and workers alike are prohibited from contracting out of the benefits of the Act, and the employment of a worker during his annual holiday is prohibited to employers and workers alike in any employment.

**Factories and Shops (Early Closing).**—No. 5115 is an amending Act which in substance abolishes the late closing of shops on Friday nights and nights before public holidays, and prescribes the general hour for closing shops to be six o'clock on Monday to Friday (except in certain specified instances where an earlier or later hour is permitted).

**Building Operations and Building Materials Control.**—No. 5116 is noteworthy

not so much for its intrinsic provisions but because it brings under State administration the control of building operations and of those building materials in short supply which heretofore was administered by the Commonwealth under its National Security Regulations. Those Regulations were made under the defence power contained in the Commonwealth Constitution and would probably lapse in the reasonably near future. Some form of action by the State was therefore necessary if continuance of the control was desired. Thus the novelty of the measure is to be found in administration of the control by the State, and not in the scheme of control itself which merely applies the permit system. The Act, which is of limited duration, prohibits any building operations from being undertaken without the consent of the Minister except in certain specified cases, principally in cases of houses not exceeding 1,250 square feet in area, certain farm buildings, and minor repairs to buildings fixed in regard to cost. Further, the Minister is empowered to require that building materials be produced and distributed in accordance with priorities determined by him. The Act is expressed to bind the Crown and contains the ancillary provisions necessary to complete the scheme.

**Public Service.**—No. 5124 consolidates with amendments the law relating to the public service of Victoria. It is a lengthy Act with a number of schedules concerning classes, salaries and kindred matters inextricably woven into the office of the public servant. Its main lines, however, and the important reforms it introduces may be indicated with more or less conciseness. The Act transfers from the public service to the teaching service teachers and professorial officers in the Education Department on the conditions set out in Act No. 5125 (see below, " Teaching Service "). It reconstitutes on a slightly different basis the Public Service Board which is to consist of three members, namely, a chairman, government representative (both appointed by the Governor-in-Council) and a service representative elected by members of the public service. Two such elected members are to be elected, one to represent the technical and general division in the Mental Hygiene Branch and one to represent the remainder of the public service, but only the elected member concerned in the business before the Board will sit with the Board. The chairman is to hold office until he attains the age of 65, and the other members for such term not exceeding three years as is fixed by appointment or election. To this Board are given the functions of devising means for promoting efficiency in the working of departments, of exercising a critical oversight over the methods of conducting business in departments, of supervising and improving the recruitment of the public service, of determining salaries and wages and terms or conditions of service or employment in the public service, and of performing other functions specified in the Act or to be prescribed in regulations made thereunder.

The public service is to consist of four divisions, namely, the First division, composed of the permanent heads of departments; the Administrative division, composed of officers occupying offices the duties of which require for their discharge administrative or clerical skill or experience; the Professional division, composed of officers occupying prescribed offices the duties of which in the opinion of the Board require for their discharge some professional knowledge or skill usually acquired only in some profession or other pursuit different from that required in the Administrative or Technical and general division, and the Technical or general division composed of officers not included in the other divisions. Appointments to the Administrative division are to be made after examination to the lowest class and are to be of persons between the ages of 16 and 21 years except in the case of appointments from the Technical and general division or of ex-Service personnel. Appointments to the Professional division are to be made to the lowest class from persons registered by the Board as having passed the prescribed examination. Appointments to the Technical and general division are to be made from persons registered by the Board for employment therein.

Married women are ineligible for appointment or for continuance in employment after marriage except with the sanction of the Governor-in-Council in any special case or in any special class of cases where the Board reports that such a course appears warranted in the public interest. In appointments to offices in the public service consideration is to be given first to relative efficiency and then to relative seniority. Applications are to be called for before appointments are made, and if no fit applicant is available in the appropriate division an officer from another division may be appointed, or if there is no fit applicant, a fit person not in the public service may be appointed.

The Act provides for annual increments within classes and for automatic time promotion from the lowest to the second lowest class whether or not a vacancy exists, subject only to proof of sufficient aptitude. Provision is also made for the temporary employment of persons whose names are registered therefor. The salaries, wages and terms or conditions of service and employment in the public service are to be as determined by the Public Service Board, but subject to disallowance by both Houses of Parliament. The Act also provides for six months' long-service leave with pay for officers after twenty years' service and a further three months' leave after each additional period of ten years' service.

**Teaching Service.**—No. 5125, like No. 5214 (above, " Public Service ") is a consolidating and amending Act, relating to the teaching service in the Education Department. Like No. 5124 also, it is a lengthy measure, but again the main lines may be indicated. The Act establishes a Teachers Tribunal consisting of a chairman and two members. The chairman is to be appointed by the Governor-in-Council and to hold office until he attains the age of 65. One member is to be a government representative appointed also by the Governor-in-Council for a term not exceeding three years; the third member is to be elected by teachers to represent the teaching service and to hold office for a term not exceeding three years. The functions of the Tribunal are to determine salaries and wages and terms or conditions of service or employment in the teaching service; to determine the relative number of positions for teachers on the classified roll for each class of each division; to determine appeals against decisions of committees of classifiers; to deal with charges made under the Act against members of the teaching service; to appoint teachers and professional officers, and to perform other functions prescribed in regulations under the Act.

Teachers are to be classified in three divisions: the primary schools division, the secondary schools division and the technical schools division. A committee of classifiers is established for each of the three divisions, consisting of an independent chairman, the chief inspector of the relevant class of school and a senior teacher in the relevant school division elected by teachers in that division. The relative number of positions for teachers on the classified roll for each class of each division is to be prescribed by regulations made after consideration of any relevant report to the Tribunal from the committee of classifiers for the division and after consultation with the Director of Education. In adjusting the teaching staff and allotting teachers to schools the Director of Education is to have regard to such regulations. Each committee of classifiers is to prepare a classified roll of classified teachers for the relevant teachers, and provision is made for supplementary classified rolls and the transfer of teachers from one classified roll to another, and for the employment of student teachers, sewing mistresses, temporary teachers and teachers of prescribed special subjects.

The salaries and conditions of employment in the teaching service are to be as determined by the Tribunal subject to disallowance by both Houses of Parliament. Appointments to vacancies and promotions are to be made by the appropriate committee of classifiers and teachers in the lowest class, in a manner similar to that provided for the public service in general by Act No. 5124 (above) will proceed by automatic time promotion to the second lowest class subject to proof of sufficient aptitude. Similarly certain provisions of that Act are applied

for the purposes of this Act including in particular the provisions relating to long-service leave.

**Police Regulation.**—No. 5126 amends the law relating to the police force. In this behalf it provides for the constitution of a Police Classification Board to determine the conditions of service of members of the police force including salaries and wages, allowances, hours of duty, special rates of pay, annual leave and sick leave and conditions to be observed in effecting promotions and filling vacant positions in the police force. This Board is to consist of a county court judge as chairman, a government representative and a representative of the police force elected by members of that force, and its determinations are made subject to disallowance by both Houses of Parliament. The Act also amends the existing disciplinary provisions by withdrawing from the Chief Commissioner of Police the right of awarding punishment except in cases where the member pleads guilty or wishes to be dealt with by the Chief Commissioner, and in each event only where the Chief Commissioner considers that he can appropriately deal with the matter in view of the limited punishments he is authorized to award. For other cases a Police Disciplinary Board is set up, consisting of a police magistrate (with both a deliberative and a casting vote) and a senior police officer. From this Board an appeal is provided to a county court judge. Other amendments introduced by the Act enable the Police Association to be affiliated with any federation of police associations or police unions in Australia, nothwithstanding that some of the other affiliated associations may also be affiliated with political or industrial organizations; relate to penalties for influencing elections or causing disaffection; and provide for long-service leave of six months with pay to members of the police force who have completed twenty years' service and a further three months' leave after any additional ten years' service.

**Railways (Long Service).**—No. 5127 is an amending Act which provides that long-service leave granted to officers and employees of the railway service shall as far as possible be similar to the long-service leave granted to the public service, the teaching service and the police force under Acts 5124, 5125 and 5126 (above). In this connection it should be remembered that the Victorian railways are State owned, as indeed are all the main railways in the States of the Commonwealth and the Commonwealth railways as well.

**Worker's Compensation.**—No. 5128 liberalizes the conditions on which workers' compensation is payable by extending the categories of workers. This is done by repealing the exceptions in the principal Act which exclude from the benefits of the Act "a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business," and "a member of the employer's family dwelling in his house," and also by extending the area of fiction by deeming working contractors to be employees in certain cases. The long-standing dual requirement of an accident for which compensation is payable is cut down to the alternative requirement, viz., arising out of or in the course of employment. Further, the course of employment is now to include recess periods and journeys to and from work, and in that way a great mass of case-law on that topic is rendered otiose. At the same time the Act provides that an injury is not within the Act incurred while so travelling during or after any substantial interruption of or substantial deviation from his journey made for a reason unconnected with his employment or any other break in his journey which the Workers Compensation Board, having regard to all the circumstances, deems not to have been reasonably incidental to any such journey. Thus in shutting one door on judicial decision it seems a fair surmise that the legislature has opened another, or to change the metaphor, has made it a case of *primo avulso non deficit alter*, although the goal of the legislature was not presumably the same as that of the *pius Æneas*.

The Act provides for the appointment of conciliation officers and extends the Board's control over compensation payments and also the powers of the Board

at enquiries, and introduces summary procedure by the Board in appropriate cases. " Reasonable cause " for failure by a workman to claim compensation is extended in favour of the workman so as to include within the meaning of that expression the subjective tests of (i) the making of any payment to a worker which he believes to be a payment of compensation under the Act; and (ii) any conduct on the part of the employer or his insurer or agent or on the part of an employee of any of them purporting to act on behalf of the employer whereby the worker is led to believe that compensation under the Act will or will probably be paid to him or whereby he is led to believe that he is not entitled to such compensation. The Act also provides a number of other amendments, including provision for compensation to be paid by lump sums or instalments, prohibition on the giving of further certificates approving schemes of compensation outside the Act, and increased penalties for failure of employers to insure.

**Factories and Shops (Bread).**—No. 5130 is one of those curious morsels of legislation begotten by industrial regimentation. Its aim is to make his master as good (or as bad) as Jack by prohibiting master bakers from making or baking bread outside the hours fixed for the making or baking of bread by employees, and this aim is assisted by the fiction that each of the acts of the setting of dough in the oven, and the withdrawal of bread from the oven shall be deemed to be the baking of bread.

**Apprenticeship.**—No. 5136 is of interest as showing, once the trend of modern legislation is clear, the inevitability of legislative method. This Act, for example, reconstitutes the Apprenticeship Commission by granting additional representation thereon, apparently actuated by the maxim that in a number of members there is wisdom. The Commission is to consist of seven members, three representing employers and three representing employees, and a president " being a competent and impartial person of proved administrative ability and with a general knowledge of industrial matters and with teaching experience in a technical school." One might be pardoned for thinking that with such a paragon of presidential perfection the other six members of the Commission might well be otiose but the forms of modern democracy must be observed even in the serious business of legislation. This done, the Act proceeds with a number of provisions by the chief of which a greater discretion is given to the Commission in allowing special cases of applications for apprenticeship; certain restrictions on the employment of improvers are removed; the inspectorial powers of departmental and other officials are revised; regulations are authorized to be made for the Commission to inflict fines on apprentices and penalties are imposed for the engagement of apprentices in apprenticeship trades without the approval of the Commission.

**Juries (Fees).**—No. 5145 raises the fees payable to jurors in criminal issues by the Crown and in civil issues by the parties. One pound per diem in the former cases is now the minimum for three days' service, with an increase to twenty-five shillings for the next three days and thirty shillings a day thereafter.

**Medical Practitioners Registration.**—No. 5151 provides for the registration as Victorian medical practitioners of certain alien doctors registered under the Commonwealth National Security Regulations and of certain ex-Service personnel.

**Water.**—No. 5153 is an amending Act which, besides increasing the maximum salary of the State Rivers and Water Supply Commissioners, deals with a number of miscellaneous matters. In particular, it re-defines the qualifications required of engineers of water supply; enables the Commission to remit rates in certain circumstances; extends the powers of water authorities to restrict the cultivation, clearing and burning off of land near water channels in certain parts of Victoria; and prescribes penalties for the pollution of water in drains under the control of the Commission.

**University (Mildura Branch).**—No. 5162 is noteworthy inasmuch as it authorizes the University of Melbourne to establish and conduct as part of the

University a branch near Mildura with residential educational establishments for staff and students, and makes financial provision for the purpose. The significance of that is that a provincial branch of the University of Melbourne is for the first time established. As a practical matter of accommodation a Royal Australian Air Force establishment had been set up at Mildura, and Air Force hutments with amenities were at hand for a fairly expeditious conversion into modern University buildings. As amenities nowadays appear to form an ever-increasing part of University education, it will be appreciated that the work of conversion was facilitated. Mildura is a town in the River Murray irrigation area in the north of Victoria enjoying a mild winter and a hot summer. On those grounds it is certain that Henry Thomas Buckle would not have approved the site; but his thesis is of little importance as the humanities are not provided for in the branch curriculum, which is devoted in the main to the early general work in science, engineering and medicine.

**Money Lenders (Cash Orders).**—No. 5165 is significant in that it incorporates in the Victorian statute law provisions relating to cash orders which were prescribed for Australia as a whole under certain Commonwealth National Security Regulations which expired at the end of 1946. As those Regulations could have been justified in law only on the ground that they fell within the defence power of the Commonwealth and were necessary to the successful prosecution of the war, their adoption for the peace-time economy of a State may occasion some surprise. Modern democracy, however, appears to be ignorant of the letters of Junius or to disregard his axiom of government that "what yesterday was fact, to-day is doctrine." In its substance the Act contains provisions relating to maximum value of and interest chargeable on cash orders, discount on redemption of cash orders, liability of husbands for wives' cash orders, repayment of cash orders, crediting borrowers with amounts not expended, records to be kept of cash order business, and of course penalties. The Act also amends the provisions of the Money Lenders Act relating to the prohibition of employment of certain agents by money lenders.

**Soldier Settlement.**—No. 5179. The purpose of this Act is to supplement the general provisions of the Soldier Settlement Act, 1945 (No. 5107), by legislating in detail for the subdivision of lands acquired for soldier settlement and the settling of discharged Servicemen thereon. A summary of its hundred and one sections would become a mere catalogue, but there resides some interest in the scheme of the legislation. Briefly it is this: The Soldier Settlement Commission is to investigate the suitability for settlement of every applicant and is to notify allotments available for settlement and allocate such allotments among applicants. Initially the successful applicants will be issued with interim leases, the terms and conditions of which are prescribed by the Act. On a settler's complying wholly with the terms and conditions of an interim lease he will be entitled to a purchase lease of an allotment in substitution of the interim lease. The purchase lease (the terms and conditions of which are also prescribed by the Act) will be granted on the basis of a revised settlement value in relation to which the liability of the settler will be assessed. If the settler complies with the terms and conditions of the purchase lease, he will, on finally completing payment of the instalments over 55 years or an earlier payment of his capital liability, be entitled to a grant of the fee simple of his allotment. Until the fee simple is so granted restrictions are placed on the transfer or mortgage of allotments, but provision is made for transfer on death and for reduction of capital liability in certain cases. In that way a settler graduates through three stages which allow his adaptability, capability and enterprise to be measured.

**Free Library Service Board.**—No. 5180 provides for the establishment of a Free Library Service Board the principal functions of which will be to assist in the promotion, organization and supervision of free library services by municipal councils and other approved authorities, to recommend the basis of allocation of

Parliamentary grants to free libraries, to promote regional systems of free libraries and to make recommendations concerning libraries at State schools. The Board is to consist of nine members and to furnish an annual report of its proceedings to the Minister. The Act also makes provision for the establishment of a school for the training of librarians.

**Adult Education.**—No. 5181 provides for the establishment of a Council of Adult Education the principal functions of which will be to advise on matters of general policy relating to and on methods or developments in adult education, and to plan and supervise the administration and development of adult education in Victoria. The Council is to consist of four ex-officio members and not more than sixteen appointed members, and is to furnish a yearly report of its operations and activities. An executive committee of the Council is to be constituted and a director of adult education appointed. The executive committee is to comprise the director of adult education and four other members elected annually to the Council. Appropriations from consolidated revenue are provided for to finance the Council and its activities.

**Legal Profession Practice.**—No. 5182 provides for the establishment of a Solicitor's Guarantee Fund to be financed mainly from contributions by and levies on solicitors and sums advanced by the Law Institute or recovered by the Institute from defaulting solicitors under the Act. Detailed provision is made for the audit, administration and investment of the fund, and for the contributions and levies. The fund is to be applied to compensate persons who suffer pecuniary loss from defalcations by solicitors. The amount of compensation payable is limited to an ultimate maximum of £10,000 in any case. The procedure for claims and settlement of claims is prescribed.

Properly to appreciate the Act it is necessary to remember that up till 1893 the two branches of the legal profession, barristers and solicitors, were distinct. In that year by Act of Parliament they were amalgamated, and thereafter a person has been admitted to practise as a barrister and solicitor. In point of fact this did not succeed in doing away with the profession of barrister, for those who desired to practise as such were admitted to sign the roll of counsel on their undertaking so to practise exclusively. This has continued along with the newer statutory profession of barrister and solicitor. Again in point of fact those who desire to practise only as a solicitor may do so, but there is a considerable number of persons who under the style of barrister and solicitor carry on the business of both sides of the profession. These are popularly known as "amalgams."

As the present Act, therefore, is really aimed at controlling the proper use of trust funds it applies only to those practising as solicitors, to those admitted as barristers and solicitors and employed by a solicitor practising as such and to any other practitioner not engaged in practice exclusively as a barrister who is declared by the Council of the Law Institute by notice published in the *Government Gazette* to be a solicitor or to come within any class of practitioners so declared. With this as its object the Act proceeds to unfold its scheme to the following effect. Before November 30, 1947, every practising solicitor must cause his trust accounts, books and papers to be duly audited. Thereafter the Law Institute may at any time appoint an auditor to examine the trust accounts of any specified solicitor and report thereon. The Law Institute is to keep a roll of solicitors and issue practising certificates to solicitors entitled thereto. The practising certificates will be current for one year and annual applications must be accompanied by an audit and report as prescribed. The issue of a practising certificate may be refused on grounds of unsatisfactory audit, bankruptcy involving moral turpitude or fraud, conviction for felony or misdemeanour, failure to comply with the Act and other grounds specified in the Act. An applicant aggrieved by the refusal of a certificate may appeal to the Supreme Court. Power is given to the Council of the Law Institute to make rules relating to professional duties, practice conduct, and discipline of practitioners. Penalties are provided

for unqualified or uncertificated persons practising as solicitors and for unqualified persons drawing certain instruments and for other matters of professional misconduct. Courts are authorized to declare a solicitor entitled to a charge for his costs on property recovered or preserved by him in an action.

**Evidence.**—No. 5183 introduces into Victoria with minor modifications the provisions of the English Act 1 & 2 Geo. VI c. 28 relating to the admissibility in certain circumstances of documentary evidence as to facts in issue in civil proceedings. At the same time it amends the principal Act in some particulars, notably so as to allow medical practitioners to give evidence as to testamentary capacity of a patient without the consent of the patient.

**Parliamentary Contributory Retirement Fund.**—No. 5185 throws a highlight on the nature of modern democracy. This Act was passed at a time when wages throughout the Commonwealth were pegged under National Security Regulations and its sole object is to pay pensions to parliamentarians. It establishes a "Parliamentary Contributory Retirement Fund" and constitutes trustees of the Fund, which is to be maintained by deductions from salaries of Members of Parliament and by payments from the consolidated revenue. From the fund are to be paid pensions at the rate of the basic wage prevailing from time to time to ex-members of Parliament who have served as members for at least 15 years. Similar payments may be made to members who have served in at least three consecutive Parliaments (but not for 15 years) but who are defeated at an election or resign or do not seek re-election owing to sufficient reasons. Other members defeated at an election or resigning or not seeking re-election for sufficient reasons are also entitled to specified retiring allowances. A pensionary who becomes a member of any Parliament in Australia ceases, while such a member, to receive his title, and a pensionary who accepts any office or place of profit under the Crown in Australia is thereafter disqualified.

It is matter of history that Socrates when found guilty and asked to propose a penalty worthy of his sins replied "What then is suitable to a poor man, a benefactor, who has need of leisure to give you good advice? There is nothing so suitable, Athenians, as that such a man should be maintained in the Prytaneum, and this much more than if one of you had been victorious at the Olympic games in a horse-race or in the two or four-horsed chariot race." It may be doubtful whether the Victorian legislators sought to be numbered alongside Socrates or with the other benefactors he mentioned, but it is certain that they have added a new class to the *'αείσιτοι*.

**Friendly Societies.**—No. 5186 amends the principal Act by enabling members of a Friendly Society to subscribe for benefits on the attainment of a specified age. The Act also contains a number of miscellaneous amendments, the chief of which increase the amount payable on death to £500, provide that payments for hospital treatment are to be made to the member and not to the hospital, permit societies to make loans to members on the security of contracts relating to benefits payable on death and authorize societies to pay up to £500 to a nominee or beneficiary of a member without letters of administration being taken out.

**Trotting Races.**—No. 5201 is an Act of some social significance. It provides for the constitution of a Trotting Control Board, the function of which is to control the sport of trotting throughout Victoria and to be the sole promoter of trotting races within 30 miles of Melbourne. To this end existing legislation contained in the Police Offences Acts is amended so as to allow the Board to hold trotting races at night both on week-days and Saturdays.

**Economic Stability.**—No. 5202 is a precautionary Act. Its object is to provide State authority, if necessary, for the continuance of certain Commonwealth National Security Regulations if it should be held that the defence power of the Commonwealth no longer authorizes continuance of those regulations under Commonwealth authority. The regulations in question relate to prices, landlord and tenant, capital issues and economic organization.

## 7. WESTERN AUSTRALIA

[*Contributed by* E. Cook, Esq., *Solicitor-General.*]

No. 1. Supply 1946–47.

**Feeding Stuffs.**—No. 3 requires manufacturers or importers of manufactured food for stock when such food is of animal origin to state in their application for registration of such food the minimum percentage of crude protein, the maximum percentage of crude fat and the maximum percentage of crude fibre contained in such food.

**State Transport Co-ordination.**—No. 4 authorizes the board with the approval of the Minister, to exempt from the licensing provisions of the Act, any vehicle or class of vehicles and exempts from the licensing provision of the Act an aircraft used by a medical practitioner in the course of his professional duties or one used only for transporting a sick or injured person to or from medical aid in case of emergency. The amending Act also incorporates in the principal Act the provisions of the Road Transport Subsidy Act, 1937, by repealing that Act and re-enacting its provisions.

**Elections (War Time).**—No. 5 extends the provisions of the Act to members of the Forces serving in Japan or Borneo, permits Commanding Officers of units to designate non-commissioned officers to take votes of members, repeals the provisions for voting by discharged members of the Forces who are unenrolled and for reinstating on the rolls of persons employed under authority of the Allied Works Council and extends the operation of the Act to December 31, 1947.

**Transfer of Land.**—No. 6 empowers the Commissioner to direct the Registrar to make an entry discharging land from a mortgage when it is proved that the whole of the moneys payable under such mortgage have been paid and that the mortgagee or his transferee is dead or absent from Western Australia or cannot be found and there is no person authorized to discharge the mortgage on his behalf.

**Medical Practitioners.**—No. 8 provides that the time during which an alien doctor has practised under a licence under the National Security (Alien Doctors) Regulations shall be taken into consideration in calculating the period of seven years for which one must hold a certificate of regional registration as a qualification for registration under the Act.

**Road Districts.**—No. 9 authorizing a board to expend revenue on maintaining or building or acquiring a Civic Centre, Infant Health Centre or Kindergarten School or Playground.

No. 46 gives a Road Board power to establish, maintain and control hostels for school children or to join with another local authority in so doing.

No. 64 empowers a Road Board to establish and maintain either alone or in conjunction with any other local authority certain social services, and adds to the purposes for which by-laws may be made those for permitting and regulating lawns and gardens in roads, and establishing superannuation, sick, death, insurance guarantee or endowment funds for employees.

Provides that the Governor may cause to be prepared model building by-laws which any board may adopt.

**Business Names.**—No. 11 deletes the word "co-operative" from the list of words not to be used in a business name.

**Municipal Trading.**—No. 12 authorizes the making of regulations for prohibiting or regulating and controlling brickmaking and further authorizes a municipal council to acquire and work brick yards and to sell bricks made by it.

**Friendly Societies.**—No. 13 extends the maximum amount of assurance which a registered friendly society may offer from Three Hundred Pounds to Five Hundred Pounds and permits societies to apply surplus interest annually to such purposes as shall be approved by the Registrar.

**Nurses Registration.**—No. 14 provides for the registration of tuberculosis nurses under a separate division of the register.

**Daylight Saving.**—No. 16 provides for the proclamation of Daylight Saving Time not more than two hours in advance of standard time within an area having a radius of thirty-five miles from the General Post Office at Perth.

**Marketing of Barley.**—No. 17 provides for the constitution of a Barley Marketing Board partly nominated by the Minister to represent various interests and partly elected by the producers. The board shall be a body corporate and not an agency or representative of the Crown.

The board is clothed with certain enumerated powers for the purpose of carrying out the duties and functions imposed by the Act.

It has power to control the production of barley for sale and may license agents to take delivery of barley on behalf of the board.

The board may by public advertisement fix a day on and after which a producer shall not sell or deliver any barley to any person other than the board but this provision does not apply to barley retained by a producer for use on the farm where it is grown, to barley which has already been purchased from the board or to barley sold or delivered to any person with the written approval of the board.

The board is given wide powers for the purpose of selling barley and may classify all barley delivered to it.

**Legal Practitioners.**—No. 18 gives the Barristers' Board power to prescribe in relation to articled clerks whose service has been interrupted by war service what portion of such war service shall be deemed to be service under such articles and to prescribe for ex-Servicemen what proportion of the period of two years articles to be served by graduates may be served while attending the University of Western Australia as students of law.

**Anatomy.**—No. 20 empowers the Commissioner of Public Health to arrange for the despatch of bodies to approved Schools of Anatomy outside the State.

**Fisheries.**—No. 22 constitutes a Fishermen's Advisory Committee, to be appointed by the Minister to represent various interests, to enquire into and report to the Minister on matters referred to it and to advise the Minister on questions relating to the management, control, protection and development of fisheries.

The Committee shall not be a Crown agency or representative except in relation to matters in which it may be specially authorized by the Minister to act on behalf of the Crown.

Its members are protected from liability when acting in good faith as a member of the Committee.

Provision is made for the appointment of a Licensing Officer who is given wide powers of dealing with the granting, renewal, removal or transfer, with or without conditions, of boat licences and fishermen's licences, subject to a right of appeal to the Minister, by any person aggrieved by a decision of the Licensing Officer.

Inspectors are given power to seize nets found in closed waters and the liability of an inspector for anything done or seizure made under the Act is restricted when he has had reasonable cause to act.

The Minister is given power to control the purchase and sale of fishing gear.

**Traffic.**—No. 24 empowers traffic inspectors and police officers to exercise powers vested in them by the Act in respect to any road open for traffic, notwithstanding that such road may be on government or private property.

**Plant Diseases.**—No. 25 empowers any incorporated Fruitgrowers' Association or Local Authority to demand a vote by the owners or occupiers of orchards within a district as to whether or not a compulsory fruit fly foliage baiting scheme should be introduced within such district and provides for method by which any such poll shall be taken.

The Act then provides that if on taking such a poll at least sixty per cent. of the owners or occupiers who vote favour such a scheme the Minister shall appoint a Committee to administer the scheme.

The Committee is given various powers necessary for carrying out such a scheme and, except where it is expressly authorized by the Minister to act on behalf of the Crown, is not to be a Crown agency or representative.

**Marketing of Potatoes.**—No. 26 provides for the constitution of a Potato Marketing Board partly nominated by the Minister to represent various interests and partly elected by commercial producers. The board shall be a body corporate and not an agency or representative of the Crown. A member of the board is not personally liable for acts done in good faith by the board or by the member acting as such.

The board is clothed with certain enumerated powers for the purpose of carrying out the duties and functions imposed by the Act and is also to administer the special account at the Treasury established under the Potato Growers Licensing Act, 1941. It has power to register agents to take delivery of potatoes or to sell or distribute potatoes on behalf of the board.

The board may by public advertisement fix a day on and after which a grower shall not sell or deliver potatoes to any person other than the board but the board may grant permits authorizing sales to other persons and seed potatoes may be sold to another grower for his use. The board shall, subject to certain conditions, accept delivery of potatoes offered by growers.

All potatoes delivered to the board become the absolute property of the board freed from any equities, trusts or other claims, and all prior rights in such potatoes are converted into claims for compensation.

A grower may not, except under the authority of a permit issued by the board, use potatoes produced by him or under his control, in connection with any business conducted by him.

All potatoes delivered to the board shall be graded and compensation is to be assessed by the board by reference to the nett proceeds of the sale of potatoes of the same quality, variety or grade and the quantities delivered. Progress payments may be made by the board and deductions may be made to cover certain costs and expenses.

**Milk.**—No. 27 consolidates and amends the law relating to the regulation and organization of the production, purchase, treatment, sale and distribution of milk for use by consumers within the State.

It provides for the constitution of a board, to be the successor to the Metropolitan Milk Board, and to be a body corporate the members of which shall not be personally liable for any act of the board. The board shall consist of five members partly appointed by the Governor and partly elected by dairymen licensed under the Act. Funds previously established under the provisions of the Metropolitan Milk Act, 1932–1944, and the Dairy Cattle Compensation Act, 1926, shall be vested in the board.

The Act prohibits any person from carrying on business as a dairyman or milk vendor or treating milk intended for sale without an appropriate licence issued by the board.

The various types of licences are enumerated and provision made for the mode of issue. A person refused a licence by the board may appeal to the Minister.

Certain returns are required to be furnished to the board and licensees are bound to contribute towards the administration expenses of the board in the manner prescribed.

The Act provides for regular inspections of all dairy cattle kept by licensed dairymen and for the removal and slaughtering of diseased cattle, and for the cessation of the supply of milk by any dairyman whose cattle are diseased.

Dairymen whose cattle are slaughtered because they are diseased are entitled to compensation from the Dairy Cattle Compensation Fund established under

the Act from contributions by licensees and the Treasurer of the State and other moneys set out in the Act.

**Charitable Collections.**—No. 29 prohibits any person from collecting for charitable purposes unless he is the holder of a licence under the Act or is authorized by a licensed society.

Constitutes an Advisory Committee of five members to be appointed by the Governor, and the Committee shall report to the Minister on all applications for licences and make enquiries and recommendations as to revocation of licences.

Provision is made for the submission by licensees to the Minister of audited statements as to collections and the Auditor-General is authorized to examine accounts and report to the Minister.

The Governor may by proclamation transfer funds held by licensees but not required for the original purposes for which they were received to other charitable bodies and may also in certain circumstances vest in the Minister funds held by licensees.

**Land.**—No. 35 provides for the appointment of the Director of Land Settlement.

The Governor is authorized to dispense with the requirements of Part IV of the Act as to the sale of town and suburban lands by public auction and may approve of any such lot being offered for sale in fee simple or for leasing for a term not exceeding ninety-nine years.

The Governor may define and set apart Crown lands as Farm Reconstruction Areas to be disposed of to persons who either hold adjacent land which is insufficient in area or quality to provide a reasonable living or hold or have held land in some other locality which has been found difficult or uneconomic to work.

The Board of Appraisers appointed under s. 98 of the Act is given power to call and examine witnesses on oath.

The Minister is authorized to defer the payment of rent of any conditional purchase lease held by an ex-Serviceman and certain rebates are authorized to be given to lessees who are discharged members of the Forces or the next-of-kin of a deceased discharged member of the Forces.

**Traffic.**—No. 48 provides that the penalty for an offence of which failing to stop after an accident in which any person is injured shall normally be imprisonment but that the Court may order payment of a fine if there are special reasons why imprisonment should not be imposed and makes it obligatory upon a Court before whom a person is convicted of driving while under the influence of liquor or drugs to cancel such person's licence and disqualify him from holding a licence for various terms dependent on the number of previous convictions for this type of offence suffered by such person.

The Act also empowers the Governor to make regulations prescribing working hours and conditions for drivers and conductors employed on passenger vehicles and providing for the employment of conductors on omnibuses but it is provided that any relevant award of the State Arbitration Court shall prevail over any such regulations. Power is also given to the Governor to make regulations to regulate the queueing of intending passengers at omnibus stopping points.

**State Housing.**—Upon the proclamation of No. 51, the name of the " Workers' Homes Board " shall be changed to the State Housing Commission and the members of the board shall hold office as and constitute the Commission. All assets and liabilities of the board shall be vested in the Commission and all things done by the board prior to the commencement of the Act in aid of State housing which would have been valid if done by the Commission after the commencement of the Act, are validated.

The Commission has power to acquire, hold and dispose of property of all kinds for the purposes of the Act and the Governor may vest in the Commission or place under its control any Crown land and may set apart and dedicate for the purposes of the Act any Crown land.

The Act enumerates the general powers, duties and functions of the Commission as well as numerous special powers with which it is clothed, including a power to acquire compulsorily any private land within five years after the commencement of the Act.

Provision is made for the provision of funds by parliamentary appropriation and the Commission is empowered to raise money by debentures guaranteed by the State.

The Minister on the recommendation of the Commission may cause dwelling-houses to be erected on any land held or controlled by the Commission to be let under a perpetual lease subject to reappraisement of rental every twenty years. The rentals shall be appraised or reappraised on the basis of the capital value less the value of the dwelling-house and the capital cost of the dwelling-house with interest shall be paid by the lessee by instalments extending over forty years or such other period as the Minister may direct. On payment of the full amount of the capital cost of the dwelling-house the lessee is to receive a certificate of purchase and thereafter the lease shall be held subject to the payment only of ground rent and rates and taxes and certain covenants in the statutory lease shall cease to apply.

The Commission is also empowered to erect and dispose of dwelling-houses to workers and to make advances to any worker for the purpose of enabling him to erect a dwelling-house, to purchase a dwelling-house, to enlarge a dwelling-house or to discharge any mortgage or liability on his holding. Any such advance is to be secured by a first mortgage for a term not exceeding forty years repayable with interest by quarterly or monthly instalments and various powers and conditions are expressed to be included in any such mortgage.

The Commission is authorized to erect dwelling-houses to be let out to workers on a weekly tenancy basis and to acquire and convert and improve Army huts for that purpose. Weekly tenancies may at any time be converted into perpetual leases.

The Commission may make advances to any person, whether a worker or not, to enable alterations or additions to be made to a dwelling-house to improve the standard of comfort or convenience of such dwelling-house.

The Commission is to manage the business of any Commonwealth-State Housing Scheme and particularly of the agreement ratified by the State Housing Agreement Act, 1945.

The Commission may erect and equip hostels, let or lease apartments therein, provide amenities and facilities for the persons living therein and provide for the proper management and control of such hostels and may enter into arrangements with any local authority or any person approved by the Governor to conduct and manage any such hostel.

The Commission may also provide in any built-up area or in any area proposed to be developed for housing purposes community facilities and enter into arrangements with any Commonwealth or State authority or local authority or person approved by the Governor to conduct and manage the same.

**Alunite Industry.**—No. 53 repeals the State (Western Australian) Alunite Industry Partnership Act, 1942, and vests in the Minister all assets of the Treasurer in the partnership ratified by the repealed Act but provides that the Governor may vest in the board constituted by the Act any of such assets and the board shall take over all liability of the Treasurer in respect of the partnership.

The Minister is authorized to establish, maintain and carry on works, plant and undertakings for the purposes set out in the Act, and the Governor may dedicate any Crown lands or resume any other lands for similar purposes.

The Act constitutes " the State (Western Australian) Alunite Industry Board of Management," consisting of three members to be appointed by the Governor and to hold office during the Governor's pleasure. One of such members shall be nominated by the workers in the industry concerned in the works, plant and undertakings established by the Act.

The board is given a number of enumerated powers and it is provided that proceedings by and against the Minister shall be taken by and against the board in its corporate name as the agent or representative of the Minister.

**Mines.**—No. 54 consolidates and amends the law relating to the inspection and regulation of mines other than coal mines and shall come into operation on a date to be proclaimed.

Provides for the appointment of District Inspectors, Special Inspectors and Workmen's Inspectors, and enumerates their powers and duties.

Mines are to be under the control of a registered manager and no person is to act as manager of more than two mines. Underground workings of mines employing twenty-five or more men underground shall be under the control of a certificated underground manager. Engine drivers must hold certificates of competency.

Notice of accidents is to be given to the inspector, who shall make an examination and inquiry into the cause.

Hours of working are restricted as is the employment of foreigners who cannot understand and speak the English language. Sunday labour is prohibited except in certain essential instances.

Proceedings for offences shall be taken by an inspector, may be heard before the warden or resident magistrate and shall be commenced within six months after the offences have been committed.

**Factories and Shops.**—No. 60 amends the definition of "factory," repeals certain sections dealing with permissible hours of work for male workers, makes alterations to certain statutory holidays and provides for annual leave for employees in factories and shops and for certain limited payments for non-attendance caused by ill-health, and provides that the minimum wage for employees shall be not less than that set out in the award for the time being in force under the Industrial Arbitration Act for shop assistants and shall be subject to cost of living adjustments.

It is provided that the usual notice necessary to terminate employment other than for misconduct or neglect shall be one week's notice but this provision does not apply to workers employed for less than six consecutive working days.

**Hairdressers Registration.**—No. 61 is to come into operation on a date to be proclaimed and is only to apply within a radius of twenty-five miles from the General Post Office at Perth. The Act shall not apply to medical practitioners, nurses or masseurs, nor shall it prohibit the practice of hairdressing by students and apprentices.

The Act provides for the constitution of a board, with perpetual succession and a common seal and which shall be called the Hairdressers Registration Board of Western Australia and shall be capable of suing and being sued.

The board is to consist of a Chairman and four other persons all appointed by the Governor to represent various interests and except where expressly authorized by the Governor to act for the Crown is not to be deemed a Crown agency or representative.

The board is clothed with certain enumerated powers to examine and register hairdressers and to recommend standards of hygiene and sanitation for hairdressing establishments and generally to carry into effect the provisions of the Act. The members of the board are prohibited from liability for any act done in good faith.

Provision is made for registration of hairdressers by the board and for fees to be prescribed to be paid for such registration.

After the expiration of six months after the commencement of the Act no unregistered person shall assume or use the title of hairdresser, nor practise hairdressing and no person whether registered or not shall practise any prescribed class of hairdressing unless registered in respect of such prescribed class of hairdressing. No person shall be able to recover in any Court fees or charges for

hairdressing unless registered in respect to the appropriate prescribed class of hairdressing.

**Economic Stability.**—No. 62 empowers the Governor by proclamation to continue in force all or any of certain Commonwealth regulations and, after consultation between the Premier of the State and the Prime Minister of the Commonwealth, to make regulations in respect to matters dealt with by those Commonwealth regulations or amending or repealing any regulations in force by virtue of the Act.

A Consultative Committee is constituted to consist of the Premier and the Leader of the Opposition and one member of the State Parliament nominated by the Premier and one member of the State Parliament nominated by the Leader of the Opposition and no regulations shall be made under the Act until they have been discussed by that Committee.

**Coal Mines.**—No. 63 consolidates and amends the law relating to the inspection and regulation of coal mines.

It provides for the appointment of Departmental Inspectors, Special Inspectors and Workmen's Inspectors, and enumerates their powers and duties.

Every coal mine is to be under the control of a certificated manager and the daily supervision of every mine is to be exercised either by the manager or a certificated under-manager. The manager shall also appoint deputies whose duties are enumerated in the Act.

Notice of every accident in a mine is to be given to the Inspector and provision is made for enquiries into accidents and reports thereon to the Minister.

Employment of boys is restricted and employment of females prohibited. Hours of working are restricted and the method of payment of wages regulated. Sunday labour is prohibited except in certain essential instances.

The Act makes provision for an Accident Relief Fund and for contributions thereto by employers and employees and the administration of the fund.

For the purpose of granting certificates of competency and of service for the purposes of the Act, a Board of Examiners is constituted to consist of three members to be appointed by the Governor.

The board is clothed with certain enumerated powers and shall from time to time report to the Minister and shall keep a register of the holders of certificates.

Jurisdiction is given to a resident or stipendiary magistrate to try the validity of any assessment, rate or order for borrowing money.

**Wheat Industry Stabilization.**—The substantive provisions of Act No. 65 are not to come into operation until proclaimed by the Governor after an examination by the Government of recent Federal wheat legislation and the possibility of the creation of a Western Australian pool as part of a national stabilization scheme. Such proclamation shall not be made unless after such inquiry the Government has determined that the proposal contained in the Act is in the best interests of the Wheatgrowers of the State and unless an absolute majority of wheatgrowers who, under Commonwealth regulations held a wheatgrowers licence expiring on March 1, 1946, or March 1, 1947, vote in favour of the Act being brought into operation in a ballot to be conducted in the manner set out in the Act.

The Australian Wheat Board, constituted by the Wheat Industry Stabilization Act, 1946 (Commonwealth), is empowered to license receivers of wheat on behalf of the board and is given certain enumerated powers for giving effect to the Act.

Except for certain exceptions set out in the Act, every person who owns wheat shall deliver that wheat to the board and is prohibited from delivering or selling that wheat to any person other than the board. Delivery of wheat to a licensed receiver is deemed to be delivery to the board. The price to be paid by the board in respect of wheat delivered shall be determined in accordance with the Commonwealth Act. The board is empowered to authorize inspectors to enter properties and inspect stocks of wheat.

The Act constitutes a Wheat Industry Stabilization Committee to be appointed

by the Minister clothed with powers to advise the Minister on matters connected with the stabilization and control of the wheat industry and to organize and control the registration of wheat farms and the licensing of persons to grow wheat.

Provision is made for the registration of wheat farms and licensing wheat growers. Every licence shall be conditioned not sowing a greater number of acres than the Committee determines and such other conditions as are prescribed.

The Act prohibits a wheat grower from harvesting wheat for grain otherwise than from the registered farm in respect of which he is licensed and from contravening any condition of his licence. It also prohibits any person, not being a wheatgrower, from harvesting wheat for grain in excess of ten acres.

## IV. NEW ZEALAND

[*Contributed by* H. D. C. Adams, Esq., C.M.G., LL.B., *Law Draftsman.*]

### 1945

During the Second Session of the 27th Parliament of New Zealand, extending from June 27 to December 7 in the year 1945, forty-nine Public Acts, nine Local Acts, and four Private Acts were passed.

Among the Public Acts there were measures dealing with parliamentary representation; full employment; a universal minimum wage; social security; Maori social and economic advancement; the nationalization of the Bank of New Zealand; the establishment of a National Airways Corporation, a Wool Disposal Commission, a Linen Flax Corporation, a Council for Education Research, and a State Hydro-electric Department; Government Service Superannuation; appeals in criminal cases; the law of evidence; atomic energy; and standard time.

**Finance.**—Two Finance Acts were passed (Nos. 2 and 45). S. 2 of No. 2 authorized payments from accounts under the Marketing Act, 1936, for the purposes of stabilization, the Minister of Marketing being empowered to pay such sums as he agreed upon with representatives of the industry concerned for the purpose of subsidizing the costs of production or marketing of goods or of equalizing the net returns of producers. No. 45 included provisions authorizing the Marine Department to establish schools of navigation and to operate a ferry steamer service to Stewart Island (ss. 8 and 9), and various provisions in Part V relating to the general increase in the salaries of State employees granted as from June 30, 1944.

**Definition of "The War."**—S. 16 of the Finance Act (No. 2) prescribed rules (of which judicial notice is to be taken) for the interpretation of all statutory references to "the war" as meaning the war that commenced on September 3, 1939, and provided for the termination of the war to be fixed by a Proclamation by the Governor-General to be published in the *Gazette*.

**Judicature.**—The Judicature Amendment Act (No. 3) extended the term of the Chief Justice (Right Hon. Sir Michael Myers, G.C.M.G.) for one year from September 6, 1945, notwithstanding that under s. 13 of the Judicature Act, 1908, he would have retired on attaining the age of 72 years on that date. (He subsequently resigned during the course of the year's extension.)

**Standard Measures.**—The Scientific and Industrial Research Amendment Act (No. 6) required the Minister in charge of the Department of Scientific and Industrial Research to procure and have the custody of such principal standard measures and such copies thereof as may be required for any New Zealand standards of measurement. The Department is to maintain and check the principal standard measures, and to certify copies and secondary standard measures.

**Nurses and Midwives.**—The Nurses and Midwives Act (No. 7) consolidated and amended the Nurses and Midwives Registration Act, 1925, and the six amendments thereof. Part I dealt with administration, providing for a Registrar of Nurses and Midwives and setting up a Nurses and Midwives Board and defining

its functions. Part II provided for the keeping of separate registers of nurses, midwives and maternity nurses, male nurses, psychiatric nurses, and nursing aids, and prescribed the qualifications for registration. Part III dealt with training and training schools. Part IV contained miscellaneous provisions; it prohibited any registered person from practising without an annual practising certificate, and prohibited a Hospital Board from employing unregistered nurses except in special cases with the approval of the Minister or where the employee is training. The board is given disciplinary powers, with a right of appeal in certain cases to a Board of Appeal consisting of a Magistrate and two Assessors.

**Employment.**—The Employment Act (No. 9) established a Department of State, to be known as the National Employment Service and to be under the control of the Minister of Employment. It provided for the appointment of a Director of Employment, and authorized the Minister to appoint such number of Advisory Councils as he thinks fit, with such functions in relation to the Act as the Minister determines. S. 5 set out the principal function of the Department as the promotion and maintenance of full employment at all times, and ancillary functions and powers were specified. S. 8 authorized the making of regulations necessary to give full effect to the Act and, in particular, authorized regulations for the purposes of obtaining information and particulars from employees and others in relation to labour requirements or retrenchments, movements of labour, subsidies, etc. (As a matter of administration, the Department has since been merged with the Department of Labour, to form the Labour and Employment Department.)

**Parliamentary Representation.**—The Electoral Amendment Act (No. 10) made an important change by abolishing what was known as the "country quota." It repealed the provisions of the Electoral Act, 1927, under which 28 per cent. was added to the rural population before dividing New Zealand into 76 electoral districts of approximately equal population, each district returning one member to the House of Representatives. Other changes made by the Act included the setting up of one Representation Commission for the whole of New Zealand instead of two separate Commissions, one for the North Island and one for the South Island; and the division of the country into districts on the basis of the adult population instead of the total population. The 76 districts are first apportioned between the North and South Islands as nearly as may be in proportion to their respective adult populations, and then a quota is found for each Island by dividing its adult population by the number of districts allocated to that Island. The Act re-enacts the provisions as to the proceedings of the Representation Commission and as to the publication and implementing of its decisions. A new division is required to be made after each periodical census (normally taken every five years). The Act also contains various minor amendments to the electoral law, as to electoral rolls, postal voting, and offences at elections (prohibiting loud-speakers or public address apparatus, but legalizing the wearing of party emblems and the distribution of lists of candidates).

**Social Security.**—The Social Security Amendment Act (No. 11) provided for the appointment of a Minister of Social Security to administer Part II of the Social Security Act, 1938, relating to monetary benefits. The Act also provided that the family benefit of 10s. a week should after March 31, 1946, be payable in respect of every child under 16, without any means test. The basic rate of age-benefits was increased from £84 10s. to £104 a year, and the allowable income was also increased. Widows' benefits and those payable to invalids and miners and in respect of sickness and unemployment were also increased. S. 30 authorized a beneficiary, notwithstanding the restriction on alienation of benefits, to authorize payments from his benefit to be made to the Commissioner of Taxes. S. 32 authorized the Social Security Commission to treat separated husbands and wives as unmarried persons in computing the rate of a benefit. Part II of the Finance Act (No. 2), 1945 (1945, No. 45), increased the social security charge on

income from 1s. in the pound to 1s. 6d. and at the same time reduced the national security charge from 1s. 6d. to 6d., thus making the combined charge 2s. in the pound instead of 2s. 6d. S. 23 of this Act abolished the social security registration fee of 5s. a quarter for men over 20 and 5s. a year for women and youths.

**Land Transfer.**—The Land Transfer (Foreign Governments) Act (No. 14) authorized the registration of titles to land under the Land Transfer Act, 1915, in the names of foreign governments, and provided for the execution of documents under that Act on behalf of foreign governments by their senior representatives in New Zealand.

**Standard Time.**—The Standard Time Act (No. 15) defined New Zealand standard time as the time corresponding to 180° east of Greenwich, being twelve hours in advance of Greenwich mean time. The Act involved no changing of the clocks. Previously the standard time was 11½ hours in advance of Greenwich mean time, but after various experiments with summer time it had for some years been advanced by half an hour throughout the year by war regulations.

**Law of Evidence.**—The Evidence Amendment Act (No. 16) in Part I provided for documentary evidence in the same terms as the Evidence Act, 1938, of the United Kingdom Parliament (1 & 2 Geo. VI, c. 28). Part II replaced in permanent form certain war regulations relating to the completion of affidavits and documents by Servicemen while out of New Zealand. Part III contained miscellaneous provisions as to official documents and in s. 15 abolished the rule in *Russell* v. *Russell* by expressly authorizing husbands and wives to give evidence of non-access.

**Housing Improvement.**—Part I of the Housing Improvement Act (No. 17) authorized the making of regulations prescribing standards of fitness for houses; it gave local authorities certain powers of enforcing the regulations or of assisting owners to comply with them, and conferred power on the Minister of Works to act on default by the local authority or under agreement with that authority. S. 15 authorized regulations as to overcrowding; s. 16 authorized regulations requiring local authorities to keep a register of houses, and s. 17 authorized a local authority to acquire land where a house is unfit for habitation or an area is below the minimum. Part II dealt with the reclamation of overcrowded areas, and gave powers to local authorities as to the proclamation of reclamation areas and the re-subdivision and improvement of those areas. Part III contained miscellaneous provisions as to compensation when lands are taken or houses are demolished, as to borrowing powers of local authorities, and as to the right of entry to premises for the purposes of the Act.

**Bank of New Zealand.**—The Bank of New Zealand Act (No. 18) provided for the nationalization of the Bank of New Zealand. The Bank was incorporated by the Bank of New Zealand Act, 1861, and at the time of the passing of the present Act the Government held a large number of shares and had the right to appoint a majority of the directors. The Act declared all shares on the Wellington register not belonging to the Crown to be vested in the Crown and fixed the prices to be paid to the holders, with an option to the holders to take cash, or tax-free non-transferable stock, or ordinary Government stock, the price varying according to the mode of payment. S. 6 authorized the Minister of Finance to buy the privately owned shares on registers out of New Zealand (in London, Sydney, and Melbourne) at prices and on terms to be agreed upon. S. 11 reconstituted the Board of Directors, all the members and the Chairman and Deputy Chairman to be appointed by the Minister of Finance. S. 13 authorized the Minister to exercise His Majesty's powers as the proprietor of the shares, and s. 14 required the Board of Directors to act in accordance with any directions of the Government given by the Minister of Finance.

**Workers' Compensation.**—The Workers' Compensation Amendment Act (No. 19) made the principal Act apply to all employees by omitting from the definition of the term " worker " the previous exception of any person employed

otherwise than by way of manual labour whose remuneration exceeds £400 a year. S. 4 extended the principal Act to industrial life assurance agents. S. 5 (which is based on s. 3 (3) of the Workmen's Compensation Act, 1925, of the United Kingdom Parliament) enabled a claim for compensation by a worker employed under an illegal contract to be dealt with as if the contract had been valid. S. 6 prescribed the conditions under which weekly payments may be discontinued.

**Fishing Industry.**—The Fisheries Amendment Act (No. 21) made various provisions relating to the registration of fishing boats and the licensing of fishermen engaged in fishing for purposes of sale.

**Criminal Appeals.**—The Criminal Appeal Act (No. 23) conferred on the Court of Appeal jurisdiction in respect of appeals against conviction and sentence or either. The Act followed closely the Criminal Appeal Act, 1907, of the United Kingdom Parliament, but it went further in giving the Court a discretion to direct a new trial instead of an acquittal in cases where an appeal against conviction is allowed. The Act incorporated the previous provisions as to appeals against sentences. The general right of appeal against conviction is new.

**Trade-Marks.**—The Patents, Designs, and Trade-Marks Amendment Act (No. 24) afforded protection from the consequences of non-use of trade-marks due to war circumstances, and modified the law as to trade-marks in relation to essential imports.

**Valuation of Land.**—The Valuation of Land Amendment Act (No. 25) further amended the definition of the term " improvements," provided that special new valuations should be related to other existing roll values, and provided for the establishment of Assessment Courts for different districts.

**Educational Research.**—The New Zealand Council of Education Research was reconstituted and incorporated by Act No. 26.

**Bush Workers.**—The Bush Workers Act (No. 27) provided for measures as to the safety of persons engaged in felling or logging operations, required their employers to keep wages and time books and a register of accidents, and provided for the appointment of Inspectors and defined their powers.

**National Airways.**—Act No. 28 of 1945 established the New Zealand National Airways Corporation, to consist of five directors appointed by the Governor-General. The Corporation is empowered to operate internal air services, with preferential rights to obtain licences therefor from the Licensing Authority, and with power to acquire existing air services compulsorily before the end of the year 1947. The Corporation's functions extend also to air services to and from New Zealand, subject to the approval of the Governor-General in Council. The Act declared the Corporation to be a common carrier (subject to the provisions of the Act and of the regulations thereunder), and contained various provisions as to the finance, management, and powers of the Corporation.

**Diplomatic Privileges.**—The Diplomatic Privileges Extension Act (No. 30) makes provision as to the immunities, privileges, and capacities of international organizations and their officers.

**Wool Disposal.**—The Wool Disposal Act (No. 32) provided for carrying out the disposals plan agreed upon by the United Kingdom, Australia, New Zealand, and South Africa in relation to the surplus stocks of wool produced during the war period, and for that purpose established the New Zealand Wool Disposal Commission and the Wool Disposal Account, and imposed a contributory charge on wool.

**Electricity.**—The Electricity Act (No. 36) established the State Hydro-electric Department and the Rural Electrical Reticulation Council, and defined their functions and conferred power to make any regulations required for giving full effect to the provisions of the Act.

**Income Tax.**—The Land and Income Tax Amendment Act (No. 37) increased the special exemption in respect of a wife or husband or housekeeper; it also

abolished the special exemption in respect of children, but modified the exemption in respect of dependent relatives and extended it to apply to children. Ss. 11 to 13 dealt with assessment of sums received from the sale of patent rights, deductions for sums expended on the purchase of patent rights, and deductions for patent expenses. S. 14 allowed a deduction for moneys spent in scientific research relating to the taxpayer's trade or business. S. 15 authorized the Commissioner to allow a deduction by way of special depreciation on buildings and plant. S. 19 required the Commissioner to publish in the *Gazette* a list of the names of certain tax evaders.

**Shops and Offices.**—The Shops and Offices Amendment Act (No. 38) provided for the reduction of the hours of employment of shop-assistants, the general rule being for a week of forty hours and for shops to be open on five days only in each week.

**Statutes Amendment.**—This Act of ninety-three sections contained miscellaneous amendments to forty-five separate Acts. S. 2 provided that no regulations should be invalid because they confer a discretionary authority on any person. S. 3 authorized the granting of letters of administration to any trust company. S. 12 amended the requirements of the Companies Act, 1933, as to annual returns. S. 20 declared members of the Armed Forces to be servants of the Crown for the purpose of claims under the Crown Suits Act, 1910, replacing war regulations to the same effect. S. 21 provided that claims against members of visiting forces could be made against the Crown under the Crown Suits Act, 1910. S. 25 exempted from the Fair Rents Act, 1936, certain agreements for the letting of part of a house to a Serviceman. S. 28 authorized the making of regulations to make membership of a Service organization a condition of employment in the Government Railways Department. S. 35 provided a simple procedure for obtaining the consent of the Court to the settlement of a claim by an infant. S. 36 increased the maximum age for jurors from sixty to sixty-five years. S. 44 amended the Local Elections and Polls Act, 1925, by prohibiting the use of loud-speakers and public address apparatus on election day but authorizing the wearing of party emblems and the distribution of lists of candidates. S. 62 made it an offence to attempt to convert a motor-car.

**Atomic Energy.**—The Atomic Energy Act (No. 41) provided for the control of the means of producing atomic energy. It declared all uranium in its natural state to be vested in the Crown, without compensation, required any person discovering uranium to notify the Mines Department, prohibited the importation of uranium, and provided for the mining of uranium by the Government and for restricting and controlling mining by other persons and the private possession of or dealing with fissionable substances.

**Maori Social and Economic Advancement.**—Act No. 43 of 1945 provided for the social and economic advancement and the promotion and maintenance of the health and general well-being of the Maori community. It replaced the Maori Councils Act, 1900, and its amendments. It established tribal districts, each with its Tribal Executive, and provided for the constitution of any part of a tribal district as a Tribal Committee area with its own Tribal Committee. The functions of the Tribal Executives and the Tribal Committees are defined, and relate to the health, advancement, and development of the Maoris and include certain disciplinary powers and the power to make by-laws.

**Minimum Wage.**—Act No. 44 of 1945 provided a universal minimum wage of £5 5s. a week for males and £3 3s. a week for females, with corresponding rates for daily, hourly, and piece-work workers. The Act applied to all workers of twenty-one years of age and upwards except apprentices and such classes of trainees as may be exempted by regulations.

**Linen Flax Industry.**—Act No. 46 of 1945 established the Linen Flax Corporation of New Zealand, consisting of eight directors appointed by the Governor-General to represent the Government, linen flax growers, manufacturers, and

employees of the Corporation. The functions of the Corporation were declared to be to organize and develop the linen flax industry and to carry on the business of producing linen flax fibre and other linen flax products and of marketing any such products in New Zealand or elsewhere. S. 24 prohibited the incorporation of any company or other body with similar functions.

**Government Service Superannuation.**—The Superannuation Amendment Act (No. 47) made some important amendments in the law relating to the three Government superannuation funds—relating respectively to the Public Service generally, the Education Service, and the Government Railways Department. Each of the three schemes varied in detail, but the general basis of all three was an annual pension on retirement at the age of sixty-five years or after forty years' service, computed at the rate of one-sixtieth of the final salary for each year of service with a maximum of forty-sixtieths. All permanent employees were compelled to contribute a percentage of their salaries, varying from 5 per cent. to 9 per cent. according to their age at entry. All those who joined after the end of 1909 were subject to a limit of £300 on their pensions, but there was no corresponding limit on the compulsory contributions. Bowing to long-continued protests, the legislature removed the £300 limit by this Act, before it could affect those retiring after forty years' service. In future, pensions are to be computed as one hundred-and-twentieth for each year of service (representing the amount earned by the contributions) plus a further equal amount representing a Government subsidy, but the latter part is not to be less than £3 15s. for each year of service or more than £300 in all. Pensions are to be computed on the average salary for the last five years of service, instead of the last three years as before.

Another major change is that contribution to the Fund ceases to be compulsory, but is optional for all employees, permanent and temporary. One who ceases to contribute may not join again without the special consent of the administering board. The Act also increased the allowances to widows of contributors from £31 to £52 a year, and contained various other miscellaneous amendments.

## 1946

THE Third Session of the 27th Parliament of New Zealand, between June 26 and October 12, 1946, resulted in the passage of forty-six Public Acts, as well as thirteen Local Acts and four Private Acts. None of the Acts was of outstanding importance. The more important provisions are referred to below.

**Nassella Tussock.**—The Nassella Tussock Act (No. 2) provided measures for the control and eradication of the plant known as nassella tussock. Part I authorized County Councils to take steps for the eradication of the plant in their respective counties. Specific powers included authority to Councils to require owners of land to eradicate nassella tussock and, in default, for the Councils to do the work at the expense of the owners. Part II provided for the constitution of Nassella Tussock Boards in areas affected by the weed, and defined the proceedings, methods of finance, powers and functions of the boards.

**Place Names.**—The New Zealand Geographic Board was constituted by Act No. 3 of 1946. Its functions are to adopt rules as to the naming of places in New Zealand, to determine new place names, and to make corrections where places are unsatisfactorily named.

**Apprentices.**—The Apprentices Amendment Act (No. 4) provided for the appointment of a Commissioner and District Commissioners of Apprenticeship and for the constitution of a New Zealand Apprenticeship Committee, and defined their functions, which are mainly to exercise control and guidance in respect of the training and employment of apprentices. Miscellaneous amendments of the principal Act were designed to improve conditions for apprentices.

**Rural Intermediate Credit.**—Act No. 5 abolished the Rural Intermediate Credit Board established by the Rural Intermediate Credit Act, 1927, and transferred its functions to the State Advances Corporation of New Zealand.

**Stock-foods.**—The Stock-foods Act (No. 6) provided for control of the sale of foods for live stock. The ingredients of all stock-foods on sale were required to be disclosed, and penalties were provided for false or misleading labels and advertisements.

**United Nations.**—The United Nations Act (No. 7) authorized the Governor-General in Council to make regulations to enable New Zealand to fulfil its obligations under Article 41 of the Charter of the United Nations, relating to measures (not involving the use of armed force) to give effect to decisions of the Security Council.

**Marriage.**—The Marriage Amendment Act (No. 8) replaced in permanent form certain war regulations which provided for the keeping in New Zealand of a special register of marriages of members of the New Zealand Forces solemnized outside New Zealand. S. 7 provided for the validity of Service marriages and replaced the United Kingdom Act of 1823 (4 Geo. IV, ch. 91) which had theretofore applied in New Zealand. S. 9 set out the Schedule of marriages forbidden on the grounds of relationship. It brought the law into line with the law of England by legalizing the marriage of a man with his former wife's aunt or his nephew's former wife and of a woman in corresponding cases, and expressly provided that the law is the same in these and all other cases whether the former marriage was terminated by death or by divorce. S. 10 provided, with the necessary safeguards, for the validation of any existing marriage that s. 9 could have made valid if it had been in force at the time of the marriage.

**Passports.**—The Passports Act (No. 10) made provision for the issue of passports in New Zealand and by New Zealand representatives overseas. Power was given to make regulations requiring the production of passports by persons arriving from overseas. Any person required to have a passport may be ordered to surrender it on demand.

**Justices of the Peace.**—The Justices of the Peace Amendment Act (No. 13) gave a general right of appeal to the Supreme Court from all sentences imposed by Justices of the Peace (including Magistrates). Formerly an appeal lay only in the case of a sentence to a fine exceeding £5 or to imprisonment for more than one month. S. 3 amended the provisions as to the security to be given by the appellant on such an appeal, and in particular dispensed with sureties in the case of appeals against sentence only, and in any case limited the amount of security to the estimated costs of the appeal, not exceeding £25. Formerly the security was also for the performance of the judgment of the Supreme Court.

**Trusts.**—The Trustee Amendment Act (No. 14) re-enacted with amendments the provisions as to trustees' powers as to the application of income for the maintenance, education, advancement, and benefit of infants, and as to advancement out of capital, the form of the new provisions being based on ss. 31 and 32 of the Trustee Act, 1925, of the United Kingdom Parliament.

**Control of Lands Sales.**—Act No. 15 made important amendments to the Servicemen's Settlement and Land Sales Act, 1943, in relation to offences against Part III, which requires sales and leases of land to be subject to the consent of Land Sales Committees, the Committees having power to fix the price and generally to prescribe the terms of the transactions. The main purpose of the amendment was to discourage what are called " under the table " payments in excess of the authorized price. S. 2 provided that any witness may be compelled to give evidence in proceedings for offences against the principal Act notwithstanding that the evidence may incriminate the witness. S. 3 provided that witnesses making full disclosure are freed from penalties in respect of the matters on which they are examined. S. 4 provided that excess consideration received in contravention of the principal Act is to be recoverable by the Court as a fine and may be refunded to the person who paid it. S. 5 provided that a land agent convicted of an offence against the principal Act may have his licence cancelled. S. 10 enabled a warrant to be granted to the police, where an information is laid under

the principal Act, to inspect books and documents, to require the production of books and documents, and to enter any premises.

**War Pensions.**—Acts Nos. 17 and 18 increased the rates of pensions payable under the War Pensions Act, 1943, and the War Pensions and Allowances (Mercantile Marine) Act, 1940, and made adjustments with regard to pensions for children in view of the universal family benefit now payable under the Social Security Act for every child.

**Maori Land Claims.**—The Waikato-Maniapoto Maori Claims Settlement Act (No. 19) gave effect to a final settlement of certain claims by Maori tribes relating to the confiscation of Maori lands in the Waikato District during the Maori Wars of the 1860's, and provided for the control and administration by a Trust Board of the moneys granted as compensation.

**British Nationality.**—The British Nationality and Status of Aliens (in New Zealand) Amendment Act (No. 20) provided that where a woman being a British subject has married an alien she shall not be deemed to have lost her British nationality by reason only of her marriage; that where a married man has ceased to be a British subject his wife shall not thereby lose her British nationality; that where a woman by reason of her marriage to an alien or by reason of her husband's change of nationality becomes an alien under the law of her husband's State, she may make a declaration of alienage and shall then cease to be a British subject; and that where an alien woman marries a British subject she shall not thereby become a British subject but may be naturalized without complying with the usual conditions.

**Customs Acts.**—The Customs Acts Amendment Act (No. 21) in Part I applied the provisions of the Customs Acts to goods exported by air. (Imports by air had been covered since 1921.) Part II abolished an additional export duty on uncoined gold that was imposed in 1939. Part III exempted various classes of goods from sales tax, including building materials, clothing, certain foodstuffs, and furniture.

**Social Security.**—The Social Security Amendment Act (No. 22) increased the rates of widows' benefits, the basic rate being £104 a year, with an additional £65 as a mother's allowance where there are children. S. 3 provided for all adopted children being regarded as the children of their adoptive parents for the purposes of the family benefit. S. 5 reduced the qualifications for a family benefit to a requirement that the child concerned must have been born in New Zealand or permanently resident for not less than one year. S. 6 enabled benefits in respect of children (normally ceasing at the age of 16 years) to be continued for educational purposes until the end of the year in which the age of 18 is attained.

**Land Subdivision in Counties.**—Act No. 23 provided for the control and supervision of the subdivision of land outside cities, boroughs, and town districts. For a subdivision for sale or building, where any allotment is less than ten acres in area, a scheme plan must be prepared by a surveyor and approved by the Minister of Lands, after reference to the County Council or other local authority. Scheme plans must conform to the Town-planning Act, 1926, and the Minister's approval may be subject to conditions as to the use of the land. The Chief Surveyor is to hold every approved scheme plan and a copy is to be held by the local authority. Provision was made for variation or revocation of a scheme plan or of the conditions attached thereto. The Act required scheme plans to set aside as a public reserve a strip a chain wide along the seashore and along the banks of lakes and rivers. Provisions were also included relating to roads and rights of way, and access-ways for foot-passengers.

**Shops and Offices.**—The Shops and Offices Amendment Act (No. 24) reduced the hours of employment in hotels and restaurants to a basic week of forty hours, modified the restrictions on the employment of females in restaurants after 10.30 p.m., and authorized the making of regulations prescribing the days on which and the hours during which premises may be open for the sale of motor-spirits.

**Veterinary Services.**—Act No. 26 constituted a Veterinary Services Council and defined its functions, which are to promote and encourage the provision of efficient veterinary services for owners of live-stock.

**Local Elections.**—The Local Elections and Polls Amendment Act (No. 27) changed the date for the triennial elections of members of local authorities from the third Saturday in May to the third Wednesday in November. It also abolished the occupier's qualification for voting and the qualification as a wife or husband, required County Councils and Road Boards to keep supplies of enrolment forms at their offices, and authorized local authorities whose electors have a residential qualification to enrol, without application, persons already enrolled on the parliamentary rolls.

**Local Government Commission.**—Act No. 28 made provision for the review and reorganization of the districts and functions of local authorities. S. 3 established the Local Government Commission consisting of four members appointed by the Governor-General in Council, the Chairman to have the qualification of a Judge of the Supreme Court. The Commission was authorized to hold public inquiries into proposals for the reorganization of any districts or the abolition or constitution of districts, etc., and to prepare a provisional reorganization scheme after any such inquiry. After calling for objections and considering all objections received, the Commission may approve a provisional scheme as a final scheme. Subject to the requirement that a poll of electors be held in certain cases, the Act provided that effect should be given to every final scheme by the Governor-General by Order in Council. The Act also provided that any powers of reorganization conferred by any other Act should not be exercised unless the Commission so recommended.

**Soil Conservation and Rivers Control.**—Act No. 29 amended the Soil Conservation and Rivers Control Act, 1941, by altering the constitution of the Soil Conservation and Rivers Control Council and providing for the delegation of some of its authority to Catchment Boards. S. 11 provided for the abolition of special drainage and river districts and for the vesting of functions exercised by their boards in Catchment Boards. S. 14 made a like provision in respect of drainage districts in counties.

**Cook Islands.**—The Cook Islands Amendment Act (No. 30) by Part I established a Legislative Council for the Cook Islands (other than Niue) and defined its powers and functions. Part II established a Native Appellate Court for the Cook Islands to hear and determine appeals from final orders of the Native Land Court. Part IV provided for land development in the Cook Islands.

**Patents, Designs, and Trade-marks.**—The Patents, Designs, and Trade-marks Amendment Act (No. 32) contained provisions based on ss. 1, 2, and 6 of the Patents and Designs Act, 1946 (9 & 10 Geo. VI, c. 44) of the United Kingdom Parliament enabling application to be made to the Commissioner for extension of the term of patents where loss arises by reason of hostilities, amending the provision as to extension of the time for applications under convention arrangements, and authorizing regulations for the protection of inventions and designs communicated under agreements with other countries. S. 5 provided for the public inspection of specifications; s. 6 provided for the publication of the *Patent Office Journal;* and s. 7 made provision for the correction of errors in registers, certificates of registration, and patents.

**National Provident Fund.**—The main purposes of the National Provident Fund Amendment Act (No. 35) was to make provision for superannuation for all employees of local authorities. Every local authority must be a contributor to the National Provident Fund under a scheme for its employees, but contribution on the part of the individual employees is optional. Provision was made for employees changing their employment from one local authority to another, and for employees leaving the employment of a local authority. Nurses and certain

other individuals were enabled to contribute to the Fund on the same basis as if they were local authority employees.

**Government Service Superannuation.**—The Superannuation Amendment Act (No. 36) made various miscellaneous amendments to the law, all of minor importance, and mostly arising out of the fundamental amendments made by Act No. 47 of 1945.

**Income Tax.**—The Land and Income Tax Amendment Act (No. 38) abolished the excess profits tax imposed in 1940. It also repealed the special provisions as to the income tax of companies using capital borrowed out of New Zealand, and provided for refunds of tax paid by non-resident traders on income exempted by Order in Council. S. 4 made special provision as to income derived from Maori land being developed; and s. 5 enabled effect to be given by Order in Council to agreements with other Governments for relief from double taxation.

**Statutes Amendment.**—The Statutes Amendment Act (No. 40) contained eighty sections and amended thirty-five separate Acts. S. 8 set out the annual bank holidays, and s. 9 prescribed the hours of banking (10 to 3 on Monday to Friday inclusive). S. 20 provided for a stay of proceedings in criminal cases after committal for trial or sentence, in addition to the former power to stay proceedings after indictment. Ss. 21 to 26 made various amendments to the electoral law, including special provisions relating to voting by members or ex-members of the Forces, and provisions for a half holiday on pay on election day. Ss. 27 and 28 extended the Fair Rents Act, 1936, to cases where several persons share a room and to cases where food is provided but the value of it does not form a substantial proportion of the rent. Ss. 45 to 50 amended the Law Practitioners Act, 1931, and empowered District Law Societies to administer the trust account of a solicitor in certain cases, to take possession of the books and documents of defaulting solicitors, to oppose the granting of annual practising certificates in certain cases, and to impose an annual levy on its members up to £5 5s. instead of £2 2s.

**Finance.**—Two Finance Acts (Nos. 16 and 41) were passed in 1946. Act No. 16 included provisions relating to a further contribution by New Zealand to the United Nations Relief and Rehabilitation Administration, the establishment of British Commonwealth Pacific airlines, the validation of an agreement between the Government and the Farmers' Federation as to the farm products stabilization accounts under the Marketing Act, 1936, increases in the Governor-General's allowances and in the Judges' salaries, and authority for the Government to construct public works outside New Zealand. No. 41 included provisions authorizing the Government to acquire shares in a New Zealand company to be formed by the Anglo-Iranian Oil Co. Ltd., authorizing the Reserve Bank to grant loans to other Governments to finance purchases of New Zealand produce (with a view to the grant of a credit to France for the purchase of wool), and providing for a penal charge in case of evasion of the social security charge on salary or wages. Part II related to the finance of Hospital Boards. Part III authorized the State Advances Corporation to provide houses for timber-workers, and for that purpose imposed a levy on all sawn timber milled in New Zealand.

**Public Service.**—Act No. 42 of 1946 made various amendments to the Public Service Act, 1912. In place of the former Commissioner and his assistants, it established the Public Service Commission of three persons to exercise control over the Public Service (not including the Railways Department or the Post and Telegraph Department, which are separately controlled under other Acts). S. 12 described the persons eligible for appointment to the Public Service. Ss. 14 to 17 provided for the permanent appointment of the large numbers of temporary employees in the Public Service, and ss. 18 and 19 provided for special appeals in respect of those appointments. Certain officers were excluded from the Public Service Act by s. 22.

**Factories.**—The Factories Act (No. 43) re-enacts the Factories Act, 1921–22,

and its amendments, with additions and alterations. Much of the Act is based on the Factories Act, 1937 (1 Edw. VIII and 1 Geo. VI, c. 67) of the United Kingdom Parliament. In s. 2 the definition of the term " factory " was extended to include places where milk is pasteurized and also abattoirs. Ss. 4 to 8 related to the appointment and powers of Inspectors. Ss. 9 to 14 provided for the registration of factories. S. 15 required a wages and time book to be kept, and s. 17 provided for a record of accidents. Working-hours, holidays, and wages were provided for by ss. 19 to 36. Ss. 37 and 38 related to the employment of women and young persons, and ss. 39 and 40 to work done elsewhere than in factories. Safety, health, and welfare provisions are contained in ss. 41 to 79, and ss. 80 to 103 under the heading " General " made provision for requisitions by Inspectors, offences, penalties, and procedure, and miscellaneous matters. S. 103 provided that the Act should bind the Crown.

**War Regulations.**—The Emergency Regulations Amendment Act (No. 44) continued for a further year (to the end of 1947) the power to make regulations under the Emergency Regulations Act, 1939, and validated all such regulations made up to the time of the passing of the Act.

**Shipping and Seamen.**—The Shipping and Seamen Amendment Act (No. 46) prescribed the hours of work for seamen, and authorized the Minister of Marine to make rules for increasing the safety of small craft. This Act was reserved for His Majesty's assent, which was given in time to enable the Act to come into force on February 28, 1947. It was the last Act so reserved as the adoption by New Zealand in 1947 of ss. 2 to 6 of the Statute of Westminster, 1931, rendered that course unnecessary in the future.

## VI. WESTERN PACIFIC

### 1. FIJI

[*Contributed by* G. T. HORSFALL, *Acting Solicitor-General.*]

TWENTY-FIVE Ordinances were passed during the year, of which eighteen were amending Ordinances or Ordinances of a purely local or transitory nature.

**Traffic.**—No. 2 consolidates and amends the existing law and makes an important addition in that it sets up a Transport Control Board with powers to control passenger transport services throughout the Colony by way of licensing individual motor vehicles or of granting an exclusive licence to a firm or individual to run a passenger service on a specified route.

**Census.**—No. 6 provides for the taking from time to time of a census of the population of the Colony. It is largely based on the United Kingdom Census Act of 1908 and replaces the Census Ordinance of 1935, which was found to be out of date for the purpose of taking the present census of the Colony.

**Contributory Negligence.**—No. 7 closely follows s. 6 of the United Kingdom Law Reform (Married Women and Tortfeasors) Act, 1935, and the Law Reform (Contributory Negligence) Act, 1945, the only modifications being those necessitated by reference to other legislation.

**Town Planning.**—No. 12 is not based upon any model and the provisions have been drawn from existing legislation in the United Kingdom and the Empire.

**Mining (Amendment).**—No. 13 gives the Governor power by Regulation to restrict or control both the disposal and export of Radio-Active Minerals.

**Price Control.**—No. 15 makes provision for controlling the price of goods and services. It takes the place of the Price of Goods Regulations made on February 14, 1946, and makes an important departure in principle in that whereas those Regulations prescribed the method of fixing maximum prices, the Ordinance in s. 5 confers this power upon the Price Controller. The general principle upon which the Price Controller acts is stated in s. 5 as being to secure the availability of goods and services at fair prices.

**Betting (Totalisators).**—No. 18 makes provision for the control of the use of totalisators at race meetings and the disposal of the money staked, a proportion of which is to be paid into General Revenue. The type of race meeting at which totalisators may be used is not limited, as it has been customary in the Colony to permit totalisators at various kinds of race meetings.

## 2. GILBERT AND ELLICE ISLANDS COLONY

[*Contributed by* SECRETARY TO GOVERNMENT.]

### 1945

**Marriages.**—No. 1 removes doubt as to the validity of marriages solemnized by Rupert Stanley Bastin as Deputy Registrar of Marriages.

**Trading with the Enemy (Amendment).**—No. 2 amends further the Trading with the Enemy Ordinances.

**Pensions (Amendment).**—No. 3 amends the Pensions Ordinances, 1941 and 1944.

**Licences (Amendment).**—No. 4 amends the Licences Ordinance, 1917, by making provision for issue of Hawker's Licence.

**Customs (Amendment).**—No. 5 amends the Gilbert and Ellice (Customs Regulation), 1912.

### 1946

EIGHT Ordinances were passed in 1946.

**Fanning Island.**—The name of Fanning Island was changed by No. 1 to Live Islands District.

**Trade Unions.**—Trade Unions are established by No. 2 and provision made for trade disputes on the lines of English legislation.

**Fisheries.**—A system of licensing of fishermen and their vessels is established by No. 3.

**Census.**—The Resident Commissioner is authorized by No. 7 to make arrangements to take a census.

## 3. BRITISH SOLOMON ISLANDS

NINE Regulations were passed in 1946.

**Trade Unions.**—Legislation on the usual English lines is contained in No. 1 to provide for the constitution of trade unions and the settlement of trade disputes.

**Land Acquisition.**—The High Commissioner is authorized by No. 3 to acquire land, either the property of the community or individuals, without compensation when it is required for certain public purposes.

**Aerial Navigation.**—Sanitary control of aerial navigation is introduced by No. 7, amending the Quarantine Regulations, 1930 to 1946.

**Motor Traffic.**—The law relating to the control of motor traffic and the licensing of motor vehicles and drivers is contained in No. 9.

## 4. KINGDOM OF TONGA

[*Contributed by* C. W. T. JOHNSON, ESQ., *H.M.'s Agent and Consul.*]

LAWS enacted—10.

**Interpretation.**—No. 3 adds to the Interpretation Act, 1926, definitions of "Officer or Public Officer" and of "Personal Luggage or personal effects."

The former is necessary for new Civil Service Regulations which are being compiled, and the latter for the classification of exempted articles under the Customs Duties Act, 1938, and the Rhinoceros Beetle Act, 1912.

**The Customs Duties.**—No. 4 amends the Customs Duties Act, 1938, by reducing the ad valorem duty on imports, and also the duty on certain specific imports contained in Schedule I of the principal Act.

**The Port and Service Tax.**—No. 5 amends the Port and Service Tax Act, 1940, by reducing the rate of tax on the value of all goods imported into the Kingdom from six per cent. to five per cent.

**The Bretton Woods Agreement.**—No. 6 confirms, on behalf of the Kingdom of Tonga, the articles of agreement drawn at the United Nations' Monetary and Financial Conference held at Bretton Woods in July, 1944.

**Probate.**—No. 7 amends the Probate Act, 1915, by providing that should no approved claim be lodged to the personal property of an intestate within six months of it having become vested in the Supreme Court, such property shall pass to the Crown.

Discretionary power is, by the Amending Act, granted the Queen in Council in such cases to order the grant of letters of administration to any person illegitimately descended from the intestate.

**The Magistrates' Courts.**—No. 8 amends the Magistrates' Courts Act, 1919, considerably increases the power of the police in the execution of search warrants. By virtue of the Amending Act the police may take from the house or premises searched not only the articles named in the warrant, but any stolen property.

**The Legislative Assembly.**—No. 9 completely changes the method of election of members to the Legislative Assembly of Tonga.

Previously such elections were somewhat primitive and haphazard. S. 3 of the amending Act provides for the systematic registration of electors, the written nomination of candidates and careful supervision of secret voting in accordance with general democratic principles.

S. 4 of the Amending Act removes the need for by-elections by providing that the candidate receiving the next highest vote to the successful candidate at the General Election shall replace the successful candidate in the case of his death, resignation or disfranchisement.

**The Rhinoceros Beetle.**—No. 10 permits the introduction to Tonga from Samoa of " kies " (very finely woven native mats) and personal luggage, other than articles (excepting " kies ") of native manufacture. Previously only goods, exclusive of timber, consigned to Tonga but landed by error or otherwise in Samoa, could be imported to Tonga from Samoa.

In all cases articles brought from Samoa to Tonga must be fumigated both immediately before export and again immediately on arrival.

### 5. NEW HEBRIDES

THE nine regulations issued in 1946 only contained minor amendments.

## VI. SOUTH AFRICA

### 1. UNION OF SOUTH AFRICA

[It is hoped to publish the review in the next issue.]

### 2. CAPE PROVINCE

[*Contributed by* A. J. PIENAAR, ESQ., B.A., K.C., LL.B.]

THE two Sessions of the Cape Provincial Council in 1946 produced 24 Ordinances. As usual the great majority consisted of amending Ordinances and the necessary appropriation measures. The following are perhaps of sufficient interest to merit comment.

**Local Government.**—Two Ordinances, viz., Nos. 14 and 24, amended the Divisional Councils and Roads Ordinance (No. 13 of 1917). The Divisional Councils are the authorities responsible for local government in rural areas. S. 5 of Ordinance 14 replaces s. 123 of the principal Ordinance (No. 13 of 1917) which provided a clog on transfer of immovable property in respect of which rates were unpaid. The old section had often been amended and had caused many difficulties. The new section clarifies the existing provisions while leaving the law substantially the same. S. 7 exempts a Council from liability to pay for damage sustained by a person while using any part of a proclaimed road other than the roadway. Some proclaimed roads are 100 ft. wide but the width of the made-up portion is usually only about 30 ft. The Council's liability is now confined to the part which it has made up. S. 2 of Ordinance No. 24 substitutes a new section for s. 292 of the principal Ordinance. Under s. 289 the Administrator may proclaim " local areas " in rural areas. These are then administered by the relative Divisional Council by means of Committees. Special powers were given to the Council to construct and maintain certain works. These powers have been extended by enabling a Council to provide for (*a*) open spaces, parks, etc., (*b*) a system of drainage of stormwater, and (*c*) a system for the disposal of sewage. A Council may also enter into contracts with an adjoining local authority to carry out a joint scheme. S. 3 gives a Council power to make the necessary regulations for the exercise of these added powers.

These amendments reflect the expansion of some of the larger cities in the Province, some of the inhabitants of which settle and form communities in areas outside the municipal boundaries where living is cheaper and there are no municipal rates to pay.

**Urban Local Authorities.**—Ordinances Nos. 5, 8 and 9 amend respectively the Village Management Board Ordinance (No. 10 of 1921), the Cape Municipal Ordinance (No. 10 of 1912) and the Local Boards Ordinance (No. 11 of 1921). The principal feature of these amendments which are common to all of them is a re-draft of the former provisions empowering these bodies to make regulations for the control and protection of common pasture lands. Additional powers to regulate in respect of other matters are also given, according to the requirements of each class of authority, e.g., municipal councils have amended powers to deal with processions in streets. This was found necessary to enable them to control demonstrations by sections of the public who, inspired by new ideologies, or a sense of political grievance, were liable to endanger the public peace.

**Education.**—Two Ordinances dealt with this subject, viz., Nos. 15 and 20. The former consisted of a variety of amendments to existing legislation. These were mainly of a financial character, such as the aid to be given to certain boarding establishments, salaries of pensioned teachers who have been re-employed, and adjustments of the salaries of assistant teachers as fixed by the Teachers' Salaries and Pensions Ordinance (No. 18 of 1944).

No. 20 is devoted almost entirely to the salaries and conditions of service of teachers. While the 1944 Ordinance dealt exhaustively with both salaries and pensions, the teachers remained unsatisfied. No. 20, which is of massive dimensions, and too technical for detailed analysis in a brief review, introduced new categories, and grades of salary, of teachers. It is divided into chapters. No. 1 classifies teachers in schools for European pupils according to their qualifications and the nature of their work, i.e., according to the classes and schools in which they teach, and the grades of salary are fixed according to these. Chapter 2 makes similar provisions for teachers in schools for coloured pupils. It should be noted that there have always been separate institutions for European, Coloured and Native children. In the first only European teachers are engaged. Chapter 3 deals with miscellaneous matters, principally with conditions of leave, etc.,

which are improved. As is to be expected this Ordinance repeals considerable portions of the principal Ordinance (10 of 1921) and of the 1944 Ordinance. It also repeals the whole of the Teachers' Salaries Ordinance, 1925.

The whole question of the salaries of teachers has been the subject of much public discussion and agitation. While the 1944 Ordinance and No. 20 of 1946 have provided for very substantial improvements, the application caused much dissatisfaction among the older teachers. The Council agreed to the principle of removing these complaints, but when it refused to pass certain taxes to meet the extra costs the grievances have continued and the teachers are still clamouring.

**Extermination of Vermin.**—At the outset it should be understood that " vermin " means certain specified categories of wild birds and animals, such as leopards, jackals (certain kinds), lynx, baboon, otters, crows, etc., and not insects of a domestic character. The schedule which enumerates the animals provides for two kinds, viz., those which are vermin, like the leopard and the crow, etc., and those which the Administrator may declare to be vermin, such as the otter, mongoose, and certain kinds of eagle, etc. At one time the extermination of vermin was dealt with in the Divisional Councils and Roads Ordinance (13 of 1917), but in 1927 a Vermin Extermination Ordinance (No. 10) was passed. Since then eight amending Ordinances have been passed. The present Ordinance is almost wholly a consolidating one and all the previous legislation has been repealed. The system remains the same. Councils pay prescribed rewards for proof of the destruction of vermin. Packs of hounds (so called, for most are of mixed breeds) may be established and maintained by Vermin Clubs, who are given certain privileges, such as the right of entry on land and protection against actions for damage. A certain number of hounds (or dogs) if registered by a club are also exempt from tax. The Administration pays a subsidy on amounts paid by Councils by way of rewards. Councils may subsidize clubs for keeping packs, and the Administration will pay two-thirds of this subsidy. The Administrator and Councils are empowered to make the necessary regulations, the most important of which relate to the proofs to be submitted of the destruction of vermin, the control or prohibition of laying poison, the hunting of packs, and the assistance which owners of land must give. The definition of " hunt " includes the organized shooting, coursing and pursuing of vermin and the organized laying of poison to kill vermin.

**Dog Tax.**—No. 22. This is a welcome consolidating measure which wipes off the statute book provisions scattered about in different Ordinances relating to local authorities and the Game Laws. All local authorities must impose a tax on dogs and issue a licence and a metal disc on payment of the tax. The minimum tax is 5s., the maximum 20s. for males and may be double for bitches. Certain dogs are exempt, such as those of breeders registered by the S.A. Kennel Club. As the Ordinance merely repeats in an improved form the existing law, it is not necessary to offer detailed comment.

**Hospitals.**—Ordinance No. 18 is by far the most important piece of legislation enacted in the Cape for many years. It is designed to reorganize and reform health services in the Province, and provide free hospitalization for all. The Department of Public Health of the Union Government had intended to take over this provincial function, but some of the Provinces resisted, and the matter was consequently left to them. The material chapters of this Ordinance which would have given effect to the policy of helping to create a happy new world for everyone after the war were to come into operation on a " fixed date "—that is, a date to be fixed by the Administrator by Proclamation. Until it becomes operative a detailed description is unnecessary, but one blessing which lawyers would welcome is the repeal of 23 existing Ordinances.

## 3. NATAL

### 1945

TWENTY-TWO Ordinances received assent from March 28 to November 29.

**Taxation.**—Detailed amendments were made in the personal, income and company taxes, Ordinance 1928 by No. 5. They varied the allowances and strengthened the provisions in respect to the liability for the personal tax.

The Entertainment Duty was increased by No. 7. A tax on sales by public auction was imposed by No. 8, which included the machinery for putting it into operation. Sales of wool, mohair, hide, skins, horns and hoofs were exempted from it.

**Statutory Bodies.**—Provision is made by No. 11 for the appointment by the Administrator, of a Chairman of certain statutory bodies including the Local Health Commission, any Private Townships Board, any Provincial Housing Board, and any Provincial Water Supply Advisory Board. The appointment in the first instance is to be for a period of ten years.

**Teachers.**—Special provision is made by No. 16 for the readmission to the teaching establishment by the Natal Education Department of persons who resigned from, or otherwise relinquished their employment therein, for the purpose of rendering military or other war service. It also makes provision for the entrance into the service of ex-Service personnel. Consequent amendments are made so as to protect their pension rights and provisional contributions by probationary teachers. The Ordinance also includes sections dealing with leave of absence without pay, counting as service for the purpose of salary increments.

Ordinance No. 13 makes reciprocity provisions for pensions in respect to persons employed in the teaching service of another Province or South West Africa.

**Land Acquisition.**—The object of No. 19 is to establish a board for the determination of the compensation to be paid in respect of land expropriated by the Provincial Administration. It lays down the powers of the board and the terms of appointment of its members, besides the basis on which compensation is to be paid to the owner. The provisions of the Ordinance may also be applied to the acquisition of land by local authorities.

**Water Supply.**—The establishment of a Water Supply Advisory Board and the constitution of Regional Water Supply Corporations is authorized by No. 21 which defines their respective duties, functions and powers. The board is required to submit an annual report of its activities to the Administrator and to the Minister of Welfare and Demobilization. The Administrator may require a Corporation to provide a pure water supply for domestic purposes in any locality, if in his opinion such a supply is necessary in the interest of public health.

**Housing.**—The Natal Housing Board is established by No. 22 which defines its functions, powers and duties. It can compel local authorities to carry out schemes for the construction of dwellings. The powers of the board enable them to investigate the necessity for, or the desirability of, purchasing or providing stocks of building materials and fittings. It is also required to establish a building research branch for the collation of the results of research in connection with housing matters and for the investigation of building problems especially affecting the Province. It is to publish the results for the guidance of persons engaged in the building industry or any allied or associated industry or enterprise. The board is to co-operate with the Private Townships Board and generally to advise and assist local authorities in connection with their housing schemes. Details are given in the Ordinance of some of the particulars to be included in the annual report of the board to the Administrator.

**1946**

TWENTY-SIX Ordinances were passed in the year and the majority of them dealt only with matters of local Government.

**Teachers' Pensions.**—A consolidating Ordinance repealing the Ordinances from 1913 now contains the law relating to the pensions or other financial benefits payable upon retirement or discharge to teachers employed in the teaching establishment of the Province or upon the death of such teachers to their dependants.

**Nurses.**—Ordinance No. 17 provides that compensation may be given to nurses in training when after enquiry it is ascertained that " such pupil nurse was in the course of his employment in or about such hospital, exposed to such sources of infection as to render it at least probable that the contraction by him of such infectious disease arose out of, and in the course of such employment." In the case of the death of the nurse, compensation may be paid to any dependant.

**Hospitals.**—Levy of a contribution of two shillings and sixpence a year by natives to the hospital is authorized by No. 18. Failure to pay the contribution is an offence included among those for which penalties are imposed under the Natives Taxation and Development Act, 1925.

## 4. ORANGE FREE STATE

[*Contributed by* F. W. A. GRAY, ESQ., B.A., LL.B.]

EIGHTEEN Ordinances were passed by the Provincial Council in 1946. Nos. 1, 2, 3 and 10 were Appropriation Ordinances and the remainder amending measures. Of the amending Ordinances, the Racecourse Amendment Ordinance, No. 12, and the Local Government Consolidation Amendment Ordinance, No. 14, present new features, which will be referred to below. The remaining amending Ordinances contain provisions of purely local interest, or provisions relating to the incidence and amounts of taxes payable to the Provincial Administration.

**The Racecourse.**—No. 12 provides that the Administrator of the Province may upon written application grant to the holder of a racecourse licence issued under the Ordinance, a licence to use a totalisator on race days on a duly authorized racecourse. Every transaction effected by means of the totalisator must be registered on a ticket board in such form as is approved by the Commissioner for Inland Revenue and it must be plainly visible to the public. The licensee is required to pay the taxes prescribed by the Ordinance in respect of his totalisator transactions.

**Local Government.**—Councillors, as well as Mayors, of Municipalities in the Orange Free State may now be remunerated for their services, under No. 14. Previous Ordinances had made provision for the payment to Mayors of annual allowances determined as to their amount by the amounts of the revenue of their respective Municipalities, the allowances ranging from a maximum amount of £1,250 payable where the Municipal revenue exceeded £500,000, to a minimum amount of £100 payable where the Municipal revenue was less than £10,000.

The new Ordinance provides that it shall be lawful for a Municipal Council to pay to Councillors out of ordinary Municipal revenue such annual allowances as may be determined from time to time by resolution of the Council, provided that the allowance paid to any Councillor, travelling and subsistence allowances excluded, shall in no case exceed twenty-five per cent. of the annual allowance paid to the Mayor in terms of the Ordinance.

## 5. NORTHERN RHODESIA

## 6. SOUTHERN RHODESIA

[It is hoped to publish the reviews in the next issue.]

# VII. INDIA AND BURMA

## 1. CENTRAL LEGISLATURE

[*Contributed by* P. D. Deshmukh, Esq., B.A.(Hons.), LL.B.]

The year under review is unique in the constitutional history of India in as much as, for the first time, a national Government was set up at the Centre and a Constituent Assembly was summoned. The legislative output of the year consists of 31 Acts of Central Legislature and 28 Ordinances and Regulations made by the Governor-General.

Out of the 31 Central Acts, 15 were amending Acts, and the rest were substantive measures, embracing different subjects of vital importance to the country, such as (*a*) Finance, (*b*) Oil seeds, (*c*) Customs duties, (*d*) Hindu Law reform, (*e*) Industrial employment, (*f*) Mica mines, (*g*) Essential supplies, (*h*) Banking, (*i*) Foreigners etc., while the amending Acts dealt with the following subjects: (*a*) Mines, (*b*) Industrial Labour, (*c*) Law and Justice, (*d*) Properties Tax, (*e*) Insurance, (*f*) Income Tax, (*g*) Factories, (*h*) Trade Marks, (*i*) Companies, etc.

**Finance.**—Act VII continues the existing duty on salt manufactured or imported by land into British India and the maximum rates of postage, continues for another year duties on customs; alters duties on cinematograph films, raw cotton and silver; imposes duty of customs on gold; alters the duty of Customs and Excise on motor spirit, kerosene; gives certain relief from income tax to earned incomes; makes some changes in the existing rates of income tax and supertax; makes some provisions relating to Excess Profit Tax.

**Hindu Law.**—By far the most important measure was introduced by a private member of the Central Assembly (Dr. G. V. Deshmukh of Bombay). Act No. XXVIII of 1946 was designed to remove flaws in the law of Hindu Marriage and the other Act, No. XIX of 1946, marks an important stage in the evolution of women's rights. By the first Act (The Hindu Marriage Disabilities Removal Act, 1946) persons of the same Gotra or Pravara could marry without any doubt as to its validity. It is an enabling Act. The conception that a man cannot marry a girl of the same Gotra or Pravara was archaic, and in order to remove this impediment the reform was necessary to suit modern requirements of the society. The Act does not permit consanguineous marriages and does not go against the principle of endogamy, that is to say it does not permit marriages within the prohibited degrees; the meaning of the word " Gotra " was lost in obscurity as some interpreted it to mean " family," while others as " blood " or grazing ground. Courts have to interpret the Hindu law on the basis of old Sanskrit commentaries and though they found that the word Gotra was without meaning, they had to hold that marriages between persons of the same " Gotra " were prohibited. The other Act gives the married Hindu women right to separate residence and maintenance if (*a*) the husband is suffering from a loathsome disease not contracted from her, (*b*) was guilty of cruelty endangering her personal safety, (*c*) deserts her, (*d*) marries again, (*e*) ceases to be a Hindu, (*f*) keeps a concubine in the same house. But the law imposes a chaste life on the woman and obliges her to comply with a decree for restitution of conjugal rights and to remain a Hindu.

**Banking.**—The Banking Companies (Restriction of Branches) Act (XXVII) is designed to assist in placing the banking structure of India on a sound footing. It restricts the indiscriminate opening and closing of branches by banking companies, and ensures that places which have not got proper banking facilities should get them rather than that branches should be opened at places which are already overbanked. This Act had to be passed to check the mushroom growth of indigenous banks, making it obligatory on them to have prior permission of the Reserve Bank of India for opening and removal of such banks in British

India. Before giving permission, the Reserve Bank takes into consideration the financial condition, the history, the adequacy of the capital structure of the bank and the public interest to be served by the branch. The Act provides for punishment for contravention in the shape of fine which may extend to one hundred rupees for every day of the breach of its provisions. Act XXIII of 1946 amends the Reserve Bank of India Act, 1934, and inserts an additional clause in s. 31 prohibiting issue of promissory notes payable to bearer except by the Bank or the Central Government. It was undesirable that such notes should be allowed to be issued by banking firms which may ultimately compete with the currency of the country. It also prevents evasion of taxation and makes it difficult for black marketers to conceal their assets. The Act repeals Ordinance No. 17 of 1946 dealing with the subject, as it was a temporary measure.

**Industrial Employments.**—Act XX requires employers in large industrial establishments (engaging more than 100 workmen) to define with sufficient precision the conditions of employment and to make them known to the workers. The rules relating to classification of workmen, their hours of work, holidays, pay days, wages, procedure for applying for leave, termination of employment, and regarding means of redress of unfair treatment, etc., are to be framed under the Act in the form of standing orders, so that the workers would know what their rights and obligations are and their ignorance can no longer be exploited. The legislation has its origin in the opinions expressed at the Indian Labour Conferences and would minimize friction between the management and workers in industrial undertakings.

Act No. X amends the Factory Act, 1934, and the amended ss. 34, 36, 38 and 44 have come into force from August 1, 1946. They are about reduced hours of work per week, prescribing 48 hours a week as suggested by Washington Convention of 1919. A corresponding reduction is made for seasonal factories.

Act I amends the Workmen's Compensation Act (No. VIII of 1923) so as to entitle workmen earning wages up to Rs. 400/– p.m. to compensation and enhances the compensation payable.

**Law and Justice.**—Act III is enacted so as to enable a Sessions Judge to recall any case or appeal made over to Additional Sessions Judge before the trial or hearing and to make it over to another court. Prior to this amendment of s. 528 of the Criminal Procedure Code (Act V of 1898) the Sessions Judge could do so only in the case of an Assistant Judge who was subordinate to him. It was therefore doubtful whether he could do so in the case of an Additional Sessions Judge who was judicially not subordinate to him (vide A.I.R. 1931 (All.) 1935). In the case of an Additional Sessions Judge a reference to High Court had to be made involving waste of time.

The genesis of Act IV amending s. 426 Cr. P.C. is explained in the statement of objects and reasons, namely provision of suspension of sentence and for releasing the appellant on bail if a High Court is satisfied that the convicted person has been granted leave to appeal to His Majesty in Council against its decision or that of the Federal Court. The Privy Council had taken the view that they cannot interfere or suspend the sentence as they were not sitting as "a court of appeal" (vide I.L.R. 1937, Nag. 236 and I.L.R. 42 Cal. 739) and in a recent case they suggested legislation for investing High Court with power to grant bail.

The Merchant Seamen (Litigation) Act, 1946, provides for special protection in respect of civil and revenue litigation of serving merchant seamen. It is modelled on the lines of Indian Soldiers Litigation Act (Act IV of 1925). Power is given to collector of the district to intervene in the case of a seaman who is unrepresented and provision is made to suspend the proceedings on a certificate from the shipping master and for setting aside decrees in certain cases, within 60 days, from the date a seaman ceases to be in service. The law of limitation is also modified where a seaman is a party.

Act XVIII (Indian Soldiers Litigation Amendment Act, 1946) amends s. 11

of the parent Act with regard to limitation in litigation for agricultural land and village immovable property. The object was to exclude the period of limitation in the case of agricultural land and village immovable property of a soldier so that his precious rights should not be prejudiced by his absence while he is serving in the Armed Forces of His Majesty.

**Special Tribunals.**—Act XXVI makes provision in relation to sentences and orders passed by Special Tribunals, on such Tribunals ceasing to function.

**Mines.**—Indian Mines (Amendment) Act (II), amends Act No. IV of 1923 in s. 30 requiring the maintenance at pitheads of bathing places and of locker rooms, separately for men and women working in mines. The Act is designed to improve the standard of life of miners and to give amenities of home to them in the mines.

**Mica.**—Mica Mines Labour Welfare Fund Act, XXII, was enacted to constitute a fund for the financing of activities to promote the welfare of labour employed in the Mica Mining industry. A cess by way of export customs duty on mica was imposed from July 20, 1946, to April 1, 1947, at 2½ per cent. *ad valorem*. As a result of it provision is made to set up committees to advise Government as to how the fund should be administered for improving health, sanitation, medical facilities, standard of living, etc., of the labour employed in the industry.

**Aliens.**—The Foreigners Act, XXXI, which reproduces in the main provisions of the Foreigners Act, 1940, and confers upon Central Government certain powers in respect of foreigners. A " Foreigner " is defined as a person (1) who is not a natural born British subject, (ii) who has not been granted a certificate of naturalization as a British subject under any law in British India, or (iii) who is not a ruler or subject of an Indian State or is not a native of the Tribal areas. The Act restricts and regulates the entry into, exit from and conduct and movements within British India of foreigners. The Act also provides for the internment of foreigners. The onus of proving that a particular person is not a foreigner is placed on that person, notwithstanding anything contained in the Indian Evidence Act, 1872 (cf. Act II of 1940). Severe penalties are prescribed for those who contravene any provisions of the Act or any order made thereunder. The provisions of the Act shall be in addition to Registration of Foreigners Act, 1939; the Indian Passport Act, 1920. The Foreigners Act, 1864, of 1940 and Ordinance 21 of 1946 have been repealed.

**Tea.**—The idea underlying the amendment by No. XIX of the Indian Tea Control (Amendment) Act, 1946, s. 17, is to make a special export licence valid only for two months in the next financial year..

**Essential Supplies.**—Act XXIV provides for the continuance during a limited period of powers, to control the production, supply and distribution of, and trade and commerce in certain commodities such as food stuffs, edible oils, cotton and woollen textiles, paper, petroleum and its products, spare parts of mechanically propelled vehicles, coal, iron and steel, and mica. Contravention of orders passed is made punishable with imprisonment up to three years and the property is liable to be forfeited.

**Police.**—The Delhi Special Police (Establishment) Act, XXV, was enacted to avoid a break in continuity of machinery created for investigation of certain offences, such as bribery, corruption, embezzlement, misappropriation in connection with matters concerning Central Departments. Owing to the abnormal conditions created by the war there was a fall in the moral standards of the people everywhere, and India was not an exception to it. There was an increase in such offences and the special Police establishment created to cope with the crimes had to be continued.

**Insurance.**—Act VI amends the Act IV of 1938, the definition of " policy holder " is clarified, and also the circumstances in which registration of an insurer is liable to be cancelled by the Superintendent of Insurance are clearly set out. It makes provision for issue of a duplicate certificate on payment of fee up to Rs. 25/– in case of loss; a new section is inserted for providing for examining the

terms and conditions of an insurance business by the Superintendent. The most important provision made by the Act is in adding a proviso to s. 39 (Act IV of 1938) making it clear that an assured has an unrestricted right of nomination under the Act. The conflict between the Insurance Act and s. 6 of the Married Women's Right to Property Act has been resolved by this additional proviso.

By insertion of another section, namely 48A, insurance agents are made ineligible to be directors of any Insurance Company carrying on Life Insurance business.

The Act regulates the working of the co-operative Life Insurance Societies and the Insurance Provident Societies.

**Income Tax.**—Act VIII amends the Indian Income Tax Act, 1922 (XI of 1922), with the object of encouraging erection of new buildings in the next two years and provides that where insurance money received in respect of a destroyed asset exceeds the difference between the original value and the written down value, no allowance will be made.

A new proviso is added which makes it clear that if a building originally not used for business purpose is subsequently so used its value as a business building would be the value at the latter date, thus making an additional depreciation allowance.

**Professions Tax.**—Act V amends the Professions Tax Limitation Act, 1941, so as to exclude the tax on companies imposed under s. 110 of the Madras City Municipal Act, 1919, from the limit of Rs. 50/–.

**Oil Seeds.**—India is one of the world's principal producers of Oilseeds; in view of the national importance of commodity, it was necessary to put oilseed research, development and technology on a more permanent basis. Hence an Indian Oilseeds Committee was set up by Act IX.

**Trade Marks.**—Act 12 amends the Trade Marks Act, 1940, which is only effective in British India. Some of the Indian States have passed similar Acts of their own. The amending Act is designed to avoid conflict of registration in Indian States and in British India. It is now unnecessary for the proprietor of a trade mark to register a trade mark more than once in India as there is a reciprocal arrangement between the States and Government of India.

**Duties.**—Protective Duties Continuation Act, XVI, extends the date up to March 31, 1947, for imposing protective duties on sugar, wood, pulp-paper, cotton and silk manufactures, gold and silver thread, wire made of gold and silver, iron and steel manufactures, and wheat. The Sugar Industry (Protection) Act, 1932, is also extended up to March 31, 1947. The Protective Duties Act, XVII, empowers the Central Government to impose by Executive action additional duties in pursuance of the recommendations made by the Tariff Board pending necessary legislation.

## ORDINANCES AND REGULATIONS

[*Contributed by* R. S. RANDHAWA, ESQ.]

### *ORDINANCES*

TWENTY-EIGHT Ordinances were promulgated by the Governor-General. Fifteen of these were of a substantive character, two dealt with repeals and the remaining amended previous enactments.

**Banks.**—No. IV empowered the Central Government to direct and authorize the Reserve Bank of India to cause an inspection to be made of the affairs of any unsatisfactory bank and its books and accounts, and to report to it the result thereof. Inspectors may examine on oath any director or other officer of the bank in relation to its business. If any person refused to produce any such book, account or other document, or refused to answer any question relating to the business of the banking company, he was liable to fine up to Rs. 500/–, and

more if he persisted in such refusal. If on consideration of the report the Central Government was of the opinion that the affairs of the banking company were being conducted to the detriment of the interest of its depositors the Central Government was empowered either to prohibit by an order in writing the banking company from receiving fresh deposits, or to refuse to direct the inclusion of or to direct the exclusion of the banking company in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934), and, after reasonable notice, to publish, wholly or partially, the report mentioned above. If the banking company, in spite of the prohibitory order, received any deposit, every director or other officer of the banking company was made liable to pay a fine which might extend to twice the amount of the deposit received.

Ordinance No. XVII prohibits banks from issuing promissory notes payable to bearer and a contravention is punishable with fine. There was tendency on the part of certain banks to introduce promissory notes, payable to bearer, of varying maturities. This practice was considered undesirable because such notes would, in effect, become bearer bonds payable on demand and circulate as currency. There was also the risk of such bank paper being issued without adequate cover and thus prejudicing the credit of Government's paper currency.

**Bribery and Corruption.**—The position before the promulgation of the Criminal Law Amendment Ordinance, 1946 (No. VI), was that only the Special Tribunals set up for the trial of certain bribery and corruption cases were authorized to follow certain special rules of evidence, such as placing on the accused person the onus of accounting for accretions to his means disproportionate to his known sources of income. As cases of this class were also triable by ordinary courts it was considered necessary in public interest that those special rules of evidence should be made applicable to the trial by the ordinary courts of certain offences, namely, taking by a public servant of gratification other than legal remuneration in respect of an official act or his obtaining valuable things, without consideration, from a person concerned in proceeding or business transacted by him; criminal breach of trust by any person or by a clerk or servant or by a public servant or by banker, merchant or agent; dishonestly receiving stolen property or assisting in its concealment, where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in the United Kingdom or the Central or Provincial Government; cheating of the above-mentioned Governments.

The Court trying any such offence can now take into consideration the pecuniary resources or property disproportionate to the known resources of income of the accused or an accretion to his pecuniary resources or property at or about the relevant date. Also in cases of bribery there will be a rebuttable presumption that the accused public servant accepted or obtained or agreed to accept or obtain the gratification as a motive or reward in respect of an official act. Ordinary courts have also been empowered to impose, in addition to any punishment, whether of imprisonment or fine or both, which the offence merits, a further fine equivalent to the amount of money or the value of other property illegally obtained, in order to compensate the Government or local authority concerned.

Ordinance No. XXII provided for the constitution of a special police force for the Chief Commissioner's Province of Delhi for the investigation of offences of the kind mentioned above, notified from time to time by the Central Government, in connection with matters concerning its Departments, and also for the superintendence and administration of the force. Members of the force were, in relation to the investigation of such offences and arrest of accused persons, invested with all the powers, duties and privileges which the police officers of that Province had in connection with the investigation of offences committed therein. The Central Government may by order extend to other areas in British India the powers and jurisdiction of members of this force for the investigation of the notified offences, but where that other area is not a railway area the

consent of the Government of the Province or of the Chief Commissioner, as the case may be, has to be obtained before these powers and jurisdiction are exercised.

**Chinese Forces.**—Criminal Proceedings in British Indian Courts against members of the Chinese Forces in British India were barred by the Allied Forces (China) Ordinance, 1946 (No. VIII). On the other hand, provision was made for magisterial help for effecting the arrest of a member of those forces who was alleged to have offended against the law of the Republic of China. The purpose of this Ordinance was to implement an agreement entered into between His Majesty's Government in the United Kingdom and the Government of India and the Government of the Republic of China.

**Currency.**—The Bank Notes (Declaration of Holdings) Ordinance, 1946 (No. II), was promulgated as a preliminary to the Ordinance next mentioned in order to ascertain the amount of the existing holders of currency notes of the denomination of Rs. 100/– and above held by banks and treasuries. It required banks and Government treasuries to furnish the Reserve Bank of India information concerning currency notes of the Government of India of the denominational values of Rs. 100/–, Rs. 500/–, Rs. 1,000/– and Rs. 10,000/– held by them at the close of business on January 11, 1946, or received by them by post on or after January 12, 1946, but which appear to have been posted on or before January 11, 1946. In the latter case the name and address of the sender, the post office of despatch and the registration number affixed by that post office to the cover containing the notes were also to be supplied. In order to verify any return made as above or where any bank failed to present any such return, the Central Government was empowered to authorize any person to inspect the books, accounts and other documents of any such bank and to examine on oath its manager. A manager guilty of a default under the Ordinance was liable to a punishment of imprisonment or fine or both, and any person who refused to produce any book or account or other document of a bank when so required to do by an authorized person was made punishable with a fine of Rs. 1,000/–.

The High Denomination Bank Notes (Demonetisation) Ordinance, 1946 (No. III), was designed to bring black market operations within the knowledge of the Government, and of the taxing authorities in particular, with a view to effective action being taken against such anti-social activities. By virtue of this Ordinance all currency notes referred to above except those of Rs. 100/– denominational value, ceased to be legal tender in payment or on account at any place in British India on the expiry of January 12, 1946. The transfer and receipt of such bank notes was prohibited but provision was made for the exchange by a bank or any other power of such notes for bank notes of the denominational value of Rs. 100/–. Every such owner, other than a bank or a Government treasury, desirous of such exchange had to subscribe to a declaration, in accordance with the prescribed procedure, giving full particulars designed to prevent evasion of the provisions of the measure which along with bank notes was to be delivered in person to a branch of the Reserve Bank or to a Scheduled bank or to a Government treasury within ten days after the commencement of the Ordinance. Whoever, in any such declaration, knowingly made a statement which was false or only partially true or which he did not believe to be true or contravened any provision of that Ordinance or the rules made thereunder, was liable to be punished with imprisonment for a term which might extend to three years or with fine or with both.

**Defence of India.**—Subsection (4) of s. 1 of the Defence of India Act, 1939, provided that the Act would remain in force during the continuance of the war and for a period of six months thereafter, but contained no saving clause similar to the last two lines of s. 102 (4) of the Government of India Act, 1935, with the result that when the Defence of India Act and Rules ceased to be in force, there was a danger that proceedings under them then pending would be held to have

lapsed. To avoid this doubt Ordinance No. XII was promulgated. The Ordinance made it clear that after the expiry of that Act, the validity of things already done and liabilities already incurred, under the Act while it was in force, would not be affected by its expiry.

Ordinance No. XX, which came into force on October 1, 1946, provided for the continuance of certain provisions of the Defence of India Act, 1939, and of the Defence of India Rules made thereunder, which would otherwise have lapsed on September 30, 1946, relating *inter alia* to measures for safety of Indian vessels, control of trade by sea, general control of industry for maintenance of supplies and services essential to the life of the community, regulating the letting and subletting of any accommodation and control of its rent in Chief Commissioners' Provinces, avoidance of strikes and lock-outs, prohibition or restriction of the import and export of goods, control of carriage of goods by railways, control of use or disposal of or dealings in imported silver and gold, restriction on export of money and gold, purchases of foreign exchange, and purchases and export of securities, and trading with the enemy and custody of enemy property.

**Essential Commodities.**—The Indian Legislature was, by s. 2 (1) (*a*) of the India (Central Government and Legislature) Act, 1946, empowered to provide for the continued operation of Central control over the production, supply and distribution of, and trade and commerce in certain essential commodities. The Indian Legislature not being in session, the Governor-General promulgated Ordinance No. XVIII to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, foodstuffs, cotton and woollen textiles, paper, petroleum and its products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica. The Central Government may delegate some of its powers to an authority subordinate to it or to a Provincial Government or to an officer or authority subordinate to a Provincial Government, and may issue directions to any Provincial Government to execute in the Province a necessary order. No order made or deemed to be made in exercise of any power conferred by or under this Ordinance can be called in question in any court. Penalties of imprisonment and fine and forfeiture of goods are provided to punish a contravention of such order.

**Railways.**—Ordinance No. XXVIII, the last Ordinance of the year under report, provided enhanced penalties for certain offences under the Indian Railways Act, 1890, and for acts of sabotage directed against railway property and the telegraph systems used by the railways. At the time of its promulgation disturbed conditions existed in certain parts of the country which resulted in dislocation of traffic, loss of life and damage to railway property. Police forces at the disposal of the Provincial Governments generally proved inadequate to deal with the situation. This Ordinance was therefore promulgated.

**Requisitioned Land.**—Ordinance No. XIX provides for the release and delivery of possession of requisitioned land or for its acquisition free from all encumbrances on payment of compensation by the appropriate Government in certain specified circumstances, that is to say, where such acquisition is necessary for any purpose connected with maintenance of the defence services or with the maintenance of supplies and services essential to the life of community, or where any works have during the period of requisition been constructed in or over the land wholly or partly at the expense of the Government which the latter wants to preserve, or where the cost of restoring the land to its original condition would be excessive.

**Statute Law Revision.**—The Repealing Ordinance, 1946 (No. I), repealed 109 Ordinances wholly, and four Ordinances partially. A majority of the repeals effected by the Ordinance were of amending Ordinances the repeal of which would, by virtue of the provisions inserted in the Ordinance on the lines of s. 6A of the General Clauses Act, 1897, not alter the pre-existing law. The purpose

of the Ordinance was to repeal as much as was practicable at the time of the Ordinance Legislation enacted during the emergency period for the further retention of which on the Statute Book no sufficient justification was found to exist. These Ordinances having been made after the date of the passing of the India and Burma (Emergency Provisions) Act, 1940, were, by virtue of subsection (3) of s. 1 of that Act, not subject to the normal six-month limit of operation.

## 2. MADRAS

[*Contributed by* SRI K. V. RAJAGOPALAN, M.A., M.L., *Joint Secretary to Government.*]

NUMBER of Acts, 18.

**Rent Control.**—Act XV regulates the letting of residential as well as non-residential buildings. Provision has been made in the Act for fixing fair rents for both classes of buildings, and protecting their tenants from unreasonable eviction. Whenever a building, the monthly rent of which is above Rs. 30/– (about £2), falls vacant, the landlord is to give notice within a week after the building becomes vacant, to a Controller appointed by the Government so that it may be allotted, if necessary, for a Governmental purpose, or as the residence of a Government officer.

**Debt Conciliation.**—Act V provides that all applications pending before a Debt Conciliation Board on the date on which it ceased to exist, should be deemed to have been dismissed, even though no specific direction had been issued by Government in that behalf under the previous legislation governing the subject, namely, s. 4A of the Madras Debt Conciliation Act, 1936.

**Elementary Education.**—Act VIII vests in the Government District Educational Officer, instead of in the heads or executive authorities of local bodies, the power to impose penalties on guardians who fail to send children of school age to schools in compulsory education areas.

**Essential Commodities.**—Act XIV enables the Government to control for a limited period, the production, supply, distribution, transport and prices of various essential articles such as firewood, charcoal, eggs, non-edible oilseeds, manures, dyes, artificial silk yarn, and motor vehicles, and trade and commerce in such articles, and also to requisition and acquire movable or immovable property.

**Gaming.**—Act IV of 1946 extends the definitions of " gaming," " common gaming-house " and " instruments of gaming " so as to cover all forms of wagering and betting. The Act also provides for the payment of rewards to informers or police officers who assist in the detection of offenders, from fines and forfeitures.

**Hindu Religious Endowments.**—Act X of 1946 (*a*) brings within the scope of the Madras Hindu Religious Endowments Act, 1926, Hindu religious endowments in the Presidency-town of Madras; (*b*) removes all distinctions between one class of temples and another, in regard to the control exercised over them; (*c*) provides for a more effective audit of the accounts of the temples; and (*d*) enlarges the powers of the Central Controlling Board in certain respects.

**Land Acquisition for Settlements of Ex-Servicemen.**—Act IX of 1946 empowers Government to acquire lands for the establishment of settlements of ex-Servicemen, or to take over lands for their temporary occupation and use. The lands so acquired or taken over are to be granted in the first instance to co-operative societies consisting predominantly of ex-Servicemen, and subsequently distributed by such societies to their members.

**Legislature.**—Act III makes persons employed on State Railways eligible for membership of the Madras Legislative Assembly.

**Local Government.**—Act I raised the maximum salary and allowances payable to the Commissioner of the Madura Municipality.

Act VI provides for the levy by municipal councils of property tax on the annual value, in the case of railway lands which are not used exclusively for agricultural purposes and are not occupied by, or appurtenant to, buildings; and it also empowers Government to frame rules prescribing the manner in which, the person or persons by whom, and the intervals at which, the annual value of such railway lands shall be estimated or revised.

Act VII makes amendments to the Madras District Municipalities Act, 1920, and the Madras Local Boards Act, 1920, which are incidental to the transfer of the main roads from the local bodies to the Provincial Highways Department. The Act makes it clear that local bodies should continue to provide civic amenities like lighting, scavenging, drainage, watering, etc., for such roads.

Acts XI and XII are closely connected measures. Act XII is a self-contained enactment governing village panchayats. Act XI removes village panchayats from the scope of the Madras Local Boards Act, 1920, and makes consequential changes in that Act. Act XI also removes certain minor difficulties encountered in working the Madras Local Boards Act besides improving the administration of District Boards in various respects in the light of experience. These Acts have not yet been brought into force.

Act XVI provides that members of municipal councils and district boards which are re-constituted after supersession or dissolution, should be elected, and not nominated. The Act also empowers the Government to appoint Special Officers for administering the affairs of District Boards during the interval between the vacation of office by existing members, and the assumption of office by new members to be elected at the first elections held after the commencement of the Act.

**Preservation of Private Forests.**—Act XVIII (i) safeguards private forests from being destroyed by the indiscriminate cutting of trees, and (ii) provides for the stay of proceedings, civil and criminal, in which any claim to customary or prescriptive rights in a forest is involved.

**Parliamentary Salaries.**—Act XIII increases the salaries of the Ministers, the Speaker and the Deputy Speaker of the Legislative Assembly (Lower House), the President and the Deputy President of the Legislative Council (Upper House), the Parliamentary Secretaries and the Members of the Legislature, on account of the great increase in the cost of living.

**Taxation.**—Act II provides for the payment of compensation to local authorities in two cases not covered by the Madras Motor Vehicles Taxation Act, 1931.

**Tenants and Ryots Protection.**—Act XVII gives protection for a temporary period to tenants to whom the Malabar Tenancy Act, 1929, applies, and tenants of private lands in estates governed by the Madras Estates Land Act, 1908, against (i) eviction and (ii) the sale of their holdings. It also protects ryots with permanent occupancy rights in such estates against the sale of their holdings for recovery of rent. Provision has also been made for the stay of suits and other proceedings relating to such eviction and sale, and for proceeding with them after the expiry of the Act.

## 3. BOMBAY

[*Contributed by the* SECRETARY TO GOVERNMENT.]

THE legislation enacted in the Province during the period from April 1, 1945, to December 31, 1946, included the following.

**Acts made by the Governor of Bombay.**—During the period, the following Acts were made by the Governor of Bombay in exercise of the powers of the Bombay Legislature assumed by him under the Proclamation dated November 4, 1939, issued under s. 93 of the Government of India Act, 1935, and having received the assent of the Governor or the Governor-General as the case required, became law. The main purposes of each of the Acts are briefly stated below:—

**1945**

**Land Improvement.**—Act VII (an Act to amend the Bombay Land Improvement Schemes Act, 1942) simplifies the procedure prescribed under the principal Act by dispensing with formal notices, the detailed provisions of ss. 7 and 8 and the preparation of records of rights and liabilities under s. 13 of the principal Act.

**Debtors Relief.**—Act VIII (an Act to amend the Bombay Agricultural Debtors Relief Act, 1939) gives effect to the recommendations of the committees appointed by Government to inquire into the working of the Bombay Agricultural Debtors Relief Act, 1939, with a view to ascertain the defects which obstruct the smooth working of the Act and the measures to be taken for remedying certain defects, simplifying the procedure of debt adjustment and a large scale and speedy composition of agricultural debts. It also seeks to safeguard the interest of debtors who are temporarily engaged in any of the Defence Services.

**Bombay.**—Act IX (an Act to amend the City of Bombay Municipal Act, 1888) removes doubt regarding the authority and responsibility of the chief or other officer in charge of the Municipal Fire Brigade to enter ships in dock areas for the purpose of fighting fire on them.

Act XII (an Act to amend the City of Bombay Municipal Act, 1888) provides that the Municipal Chief Auditor should receive a monthly salary not exceeding Rs. 1,500/- and not less than Rs. 1,200/-.

**Civil Procedure.**—Act X (an Act to amend the Bombay Civil Courts Act, 1869) provides that the functionaries of Civil Courts should be designated as "Civil Judges."

**Tobacco Duty.**—Act XI (an Act for the suspension of the Tobacco Duty (Town of Bombay) Act, 1857, and the Bombay (District) Tobacco Act, 1933) provides for the suspension of the Tobacco Duty (Town of Bombay) Act, 1857, and the Bombay (District) Tobacco Act, 1933.

Act XVII (The Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945) extends the limits of City of Bombay by including therein some portion of the Bombay Suburban District and also extends the jurisdiction of the High Court to such portion.

Act XVIII (an Act to amend the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, extends the provisions of Part II of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, to business premises in the Bombay Suburban District.

**Electricity Supply.**—Act XIII (The Bombay Electricity Surcharge (Validation) Act, 1945) validates surcharges levied or purported to be levied under the authority of Government Notification in the Public Works Department No. 6041/36, dated March 11, 1943 (as subsequently amended).

**Taxation.**—Act XIV (an Act to amend the Bombay Village Panchayats Act, 1933) empowers a panchayat in the districts of Ratnagiri, Kanara and Kolaba to levy a tax on owners or occupiers of all houses (including farm-houses).

**Wakf.**—Act XV (an Act to amend the Mussalman Wakf Act, 1923, in its application to the Province of Bombay) provides that a Court should have jurisdiction to decide when the existence of a wakf itself is denied whether the wakf exists and whether it is a wakf to which the Mussalman Wakf Act in its application to the Province of Bombay applies.

**Weights and Measures.**—Act XVI (an Act to amend the Bombay Weights and Measures Act, 1932) provides for the penalty for giving short weight or measure in cases in which the amount of error to be tolerated has not been prescribed by Government under s. 46A of the principal Act.

**Industrial Disputes.**—Act XIX (an Act to amend the Bombay Industrial Disputes Act, 1938) empowers the Labour Officer to convene a meeting in the mill compounds and to require the employer to post announcement of such meetings at such places on the premises as he may order.

**Land Acquisition.**—Act XX (an Act to amend the Land Acquisition Act, 1894,

in its application to the Province of Bombay) is intended to secure that land acquisition proceedings be completed as expeditiously as possible, and for this purpose to authorize the preliminary survey of lands likely to be needed for any public purpose and to empower officers to carry out such survey.

**Education.**—Act XXI (an Act to amend the Bombay Primary Education Act, 1923, and the Bombay Local Boards Act, 1923) raises the limits of the minimum and maximum rates at which the local fund cess on land revenue can be levied, and makes the payment of dearness allowance by local authorities to their staff compulsory at the rates fixed by Government.

**Dogs.**—Act XXII (an Act to amend the Bombay District Municipal Act, 1901, and the Bombay Municipal Boroughs Act, 1925) enables the municipalities in the Greater Bombay area other than the Bombay Municipality to arrange to pick up and destroy any stray dogs found wandering in the streets or any public place.

**Beggars.**—Act XXIII (The Bombay Beggars Act, 1945) provides for the prevention of begging, for the detention, training and employment of beggars and their dependents in Certified Institutions, and for the custody, trial and punishment of beggar offenders in the Province of Bombay.

**1946**

**Elections.**—Act I (an Act to amend the City of Bombay Municipal Act, 1888) is intended (1) to facilitate the preparation and revision of the Municipal elections roll and the conduct of elections by delimiting the existing electoral divisions of the City and to provide for the preparation of a Municipal election roll only once every four years, instead of every year, (2) to make certain amendments relating to the disqualifications for being a councillor, and (3) to provide for making provision for new electors, who become qualified in the period between two general elections, being entered upon the election roll upon claims being made.

**Debtor's Relief.**—Act II (an Act to amend the Bombay Agricultural Debtor's Relief Act, 1939) gives an option to the creditors to agree to such scaling down of the debts as to bring them within the scheme agreed to by the Land Mortgage Banks, viz., that the said Banks should take over the awards in all cases where the total amount of award is 50 per cent. or less of the value of the debtor's immovable property and the creditors should be compelled to receive payment from those Banks for their long term credit.

**Local Government.**—Act III (Ahmedabad and Surat Municipal Administration Validating Act, 1946) validates the acts of certain persons appointed by the Commissioner to exercise the powers and perform the duties of the Borough Municipalities of Ahmedabad and Surat.

**Rent Restriction.**—Act IV (an Act to amend the Bombay Rent Restriction Act, 1939, and the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944) provides that a lessee, to whom the premises are rented on a lease for a period of one year or more, should be allowed to continue as a tenant within the meaning both of s. 4 (4) of the Bombay Rent Restriction Act, 1939, and s. 4 (5) and s. 17 (6) of the Bombay Rents, Hotel Rates, and Lodging House Rates (Control) Act, 1944, and get protection from eviction provided for tenants in the two Acts mentioned above.

**Sales Tax.**—Act V (The Bombay Sales Tax Act, 1946) levies a tax on the sale of goods or, more accurately, on the turnover of such sale.

**Motor Spirit Taxation.**—Act VI (The Bombay Sales Motor Spirit Taxation Act, 1946) provides for the levy of a tax on the sales of motor spirit in the Province of Bombay.

**Wheel Tax.**—Act VII (an Act to amend the Bombay District Municipal Act, 1901, and the Bombay Municipal Boroughs Act, 1925) provides that motor vehicles plying between the limits of two or more borough municipalities or municipal districts shall not escape wheel tax, but shall be liable to it in one municipal area only.

**Property Tax.**—Act IX (an Act to amend the Bombay Finance Act, 1932) extends the term of the Act for a further period of one year and provides for the extension of the Urban immovable property tax to the areas comprised in the Poona City and the Poona Suburban Borough Municipalities and the Cantonments of Poona and Kirkee.

**Acts passed by the Bombay Legislature.**—During the period from April 3, 1946, to December 31, 1946, the following Acts were passed by the Bombay Legislature and, having received the assent of the Governor or the Governor-General as the case required, became law. The main purpose of each of the Acts are briefly stated below:—

**Payment of Members.**—Act XI (an Act to amend the Bombay Legislature Members' Salaries and Allowances Act, 1937) raises the salary and daily allowance of members of the Bombay Legislature.

Act XII (an Act to amend the Bombay Legislative Council (President and Deputy President) and the Bombay Legislative Assembly (Speaker and Deputy Speaker) Salaries Act, 1937) raises the salary and motor car allowance of the President of the Bombay Legislative Council and the Speaker of the Bombay Legislative Assembly and raises the salary paid to the Deputy President of the Bombay Legislative Council and the Deputy Speaker of the Bombay Legislative Assembly.

Act XIII (an Act to amend the Bombay Ministers Salaries Act, 1937) raises the salary and motor car allowance of the Ministers.

**Town Planning.**—Act XIV (an Act to amend the Bombay Town Planning Act, 1915) enables the Provincial Government to extend the period of 12 months allowed to a local Authority to prepare and publish a draft scheme; renders the provisions regarding the issue of commencement certificates free from doubt and provides for claims to compensation in the excepted areas referred to in sub-section (2) of s. 15 of the principal Act being subject to the conditions of any agreements entered into between the owners and the local authorities.

**Police.**—Act XV (an Act to amend the City of Bombay Police Act, 1902) empowers the Commissioner of Police to extern the persons concerned to any place within the Province or outside the Province and to detain any person whose movements are considered likely to be dangerous to the public peace during the pendency of a proclamation of emergency. It also provides for enhanced penalties for offences against orders of the Commissioner of Police taking action to prevent riots or other public disorders.

**Removal of Dead.**—Act XVI (an Act to amend the Bombay District Police Act, 1890) prohibits the movement of dead (including exhumed) bodies from one village or town to another except with the written permission of the District Magistrate or a Subordinate Magistrate authorized by him. The District Magistrate is also empowered to prohibit the disposal of the dead at unauthorized places in towns and areas where places may have been set apart for the purpose. The Act also increases the powers of District Magistrates and Sub-Divisional Magistrates to deal with public disorders.

**Sales Tax.**—Act XVII (an Act to amend the Bombay Sales Tax Act, 1946) increases the limit of Rs. 10,000/– of gross turnover, prescribed under the principal Act, for purposes of liability to tax, to Rs. 30,000/–.

**Electricity.**—Act XVIII (an Act to amend the Indian Electricity Act, 1910, in its application to the Province of Bombay) provides for the continuance of the possession already obtained, pending the completion of the purchase of the undertaking of the Hubli Electricity Company, Limited, by Government.

Act XIX (The Bombay Electricity (Surcharge) Act, 1946) provides for the levy of a surcharge by licensees and sanction-holders under the Indian Electricity Act, 1910, in respect of their undertakings.

Act XX (The Bombay Electricity (Emergency Powers) Act, 1946) provides

for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay.

**Essential Commodities.**—Act XXII (The Bombay Essential Commodities and Cattle (Control) Act, 1946) provides for the control and regulation of the production, movement, supply and distribution of, and trade and commerce in, essential commodities, and the maintenance and movement of cattle.

**Local Government.**—Act XXIII (The Ahmedabad and Surat Municipal Administration Validating Act, 1946) validates the acts of certain persons appointed by the Commissioner, Northern Division, to exercise the powers and perform the duties of the Borough Municipalities of Ahmedabad and Surat.

**Villages.**—Act XXIV (an Act to amend the Bombay Village Panchayats Act, 1933) dissolves the village bench of Chembur village situated in the areas of the Bombay Suburban District to which the jurisdiction of the Bombay City Police and the limits of the ordinary original civil jurisdiction of the Bombay High Court have been extended and provides that the appropriate Courts in Greater Bombay should dispose of suits and cases pending before the village bench and appeals against decrees and orders passed by the village bench.

**Bigamy.**—Act XXV (The Bombay Prevention of Hindu Bigamous Marriages Act, 1946) provides for the prevention of bigamous marriages among Hindus.

**Landlord and Tenant.**—Act XXVI (an Act to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939) repeals and re-enacts ss. 2 to 7 of the Bombay Tenancy (Amendment) Act, 1941, to validate the gradual and piecemeal application of the Act; also modifies the relevant provisions of the Act, shifts on the landlord the onus of proving that the tenant is not entitled to certain rights conferred on him by the Act and prescribes penalties for the failure of the landlord to discharge the liabilities imposed on him by the Act.

**Cotton.**—Act XXVII (The Bombay Cotton (Statistics) Act, 1946) facilitates the collection of statistics of stocks of Indian raw cotton in the Province of Bombay.

**Cruelty to Animals.**—Act XXVIII of 1946 (an Act to amend the Prevention of Cruelty to Animals Act, 1890, in its application to the Province of Bombay, the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902) provides for making offences under ss. 3A and 6C of the Prevention of Cruelty to Animals Act, 1890, in its application to the Province of Bombay cognizable.

**Landlord and Tenant.**—Act XXIX (an Act to amend the Khoti Settlement Act, 1880) is intended to secure to the Khots their legitimate rights and just privileges while at the same time safeguarding the tenants' interests by bringing it in line with ss. 14 to 31 of the Bombay Tenancy Act.

**Criminal Procedure.**—Act XXX (an Act to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay) empowers a District Magistrate to transfer a case pending before a Police Patel to any Magistrate subordinate to him and makes the offences under ss. 161, 162, 163, 164 and 165 of the Indian Penal Code cognizable in order to enable the anti-corruption staff to do its work efficiently and expeditiously.

## 4. BENGAL

[*Contributed by* SIR LANCELOT GRAHAM, K.C.S.I., K.C.I.E.]

DURING the year 1946 sixteen enactments were made either by the Governor in exercise of his powers under s. 93 of the Government of India Act, 1935, or by the revived Legislature. Acts I to IX (both inclusive) were made by the Governor and the rest were made by the revived Legislature.

Of the Acts made by the Governor only Act V calls for any description. This Act makes extensive amendments in the Bengal Tanks Improvement Act, 1939,

and though passed in the year 1946 and amending an Act made in 1939, its subject-matter is in no way connected with those engines of war which may be thought to have appropriated to themselves irrevocably the name of " tank." A tank in Bengal is an accumulation of water which may be natural or artificial, or a combination both of nature and industry. These tanks play an important part in the agricultural economy of Bengal, and consequently their management has attracted the attention of the Legislature and elaborate provisions have been enacted to regulate the use of the water which is to be found in such places.

Of the enactments made by the revived Legislature Acts VII, VIII, IX, X, XI, and XIII effect minor amendments in the Provincial Statute Book.

Act XII is " an Act to provide for the continuance of the special Tribunals at Calcutta constituted under the Criminal Law Amendment Ordinance, 1943." No new cases were to be brought before those Tribunals, but there being a doubt as to whether the said Tribunals were competent to dispose of cases already begun but not concluded within the period prescribed the Proclamation of Emergency, it was necessary that power should be granted to these tribunals to finish their work. This measure after being passed in the local Legislature was required to be reserved for the assent of the Governor-General.

Act XIV, which also required to be reserved for the assent of the Governor-General, was an Act concerned with the " Calcutta Disturbances Commission Enquiry Act." The Commission set up for this purpose was given by this legislation the same powers of dealing with contempt of the Commission " as if the Commission were a High Court established by Letters Patent." This legislation by reference involved the necessity of reservation for the assent of the Governor-General.

Act XV was " an Act to provide for the payment of certain allowances to certain members of the family of the Nawab Bahadur of Murshidabad and to create a charge on the agricultural lands of the Nawab Bahadur for such payment." It may be permitted to wonder how long these endowed ancient families will continue under modern conditions.

### *Ordinances*

Under s. 88 of the Government of India Act, 1935, the Governor is given a personal power, when the Provincial Legislature is not in Session and he is satisfied that immediate action is necessary, to make and promulgate ordinances which cease to operate after six weeks from the date of the reassembly of the Legislature. This power was used on twelve occasions in 1946.

Ordinance I extended the operation of a provision of the Bengal Finance Act, 1945, which would otherwise have lapsed.

Ordinance II confirmed the existence of certain ordinances due to expire.

Ordinance III made provision for the control of the production, supply, distribution of, and trade in molasses in Bengal.

Ordinance IV continued the operation of the Drugs Control Order, 1948, made under rule 81 of the Defence of India Rules and about to expire.

Ordinance V makes provision for the control of rents in Calcutta. It adopts the method of fixing by definition a standard rent and restricting the increase of such rent except on certain conditions, such as improvements to the premises and supply of furniture by the landlord. The demand for premium is made illegal except in the case of long leases for the purpose of development. Authority to fix standard rent is vested in a Controller. Tenants are protected against eviction, and various acts of default or oppression on the part of landlords are penalized.

Ordinance VI was declared to be necessary for ensuring the public safety and interest, and the maintenance of public order. Interference with public services is penalized under a section which has the marginal heading " sabotage." One is tempted to wonder how the draftsman will fare when the official language of

the Province is Bengali. Extra powers are taken for the control of processions and meetings.

Ordinance VII makes provision for the continuance of powers to control the production, supply and distribution of trade and commerce in certain commodities in Bengal. A tendency to grandiloquence is to be noticed in all these Ordinances and the explanation may be that it was felt that the urgency and importance of the occasion must be portrayed in the language of the Ordinance. S. 9 is interesting in so far as it transfers to the directors, managers, secretaries and agents of a corporation the burden of proving that they individually are not in any way concerned where the " person " contravening the order is " a company or other body corporate."

Ordinance VIII provides for action where an area is perturbed. Under this Ordinance individual bad characters may be ordered summarily to remove themselves from such area.

Ordinance IX requires immediate action to be taken for harvesting the rice crop in the districts of Noahhali and Tippera. S. 11 creates a new " mass " offence to be penalized by a collective fine where the harvesting of the crop under the direction of the statutory executive officer has been obstructed " on the part of the inhabitants." This remarkable provision was plainly prompted by recollections of the last Bengal famine.

Ordinance X stresses the urgent necessity to make special provision for the safeguarding of life and property in the districts of Noahhali and Tippera in times of emergency. On the declaration by the Government of a state of emergency extra powers may be used by the District Magistrate and suspected bad characters may be deported.

Ordinance XI extends the working hours in the jute factories, and Ordinance XII amends and enlarges the scope of Ordinance VI of the same year. The carrying for improper purposes, the burden of proving the contrary being on the accused, of any corrosive substance or liquid is made an offence punishable with seven years' imprisonment. " Looting " is created a separate offence and any police officer may (if he cannot otherwise stop the commission of the offence) use such force as may be necessary, even to the causing of death. Any person may be searched anywhere in public, for the purpose of ascertaining whether such person is carrying any explosive or corrosive substance or liquid. If ever a dispassionate record comes to be written about the state of large areas in Bengal under " the Terror," these ordinances will be a valuable source of information.

### *Regulations*

The single regulation made for the Chittagong Hill tracts under s. 92 (2) of the Government of India Act, 1935, calls for no remark.

## 5. UNITED PROVINCES

[*Contributed by* Sir Lancelot Graham, K.C.S.I., K.C.I.E.]

### 1945

Throughout the year the United Provinces remained without the Legislature created for the Province by the Government of India Act, 1935, and the legislative authority was exercised by the Governor personally under s. 93 of that Act. In exercise of those powers the Governor made ten Acts. Of these the only enactment of major importance was The Cawnpore Urban Area Development Act, 1945, which was listed as Act VI of 1945. By this Act to a large extent the powers of the Cawnpore Municipal Board under the U.P. Municipalities Act, 1916, were transferred to a new statutory body to be called The Cawnpore Development Board. Similar action had been taken nearly half a century before both in Bengal for Calcutta and in the Bombay Presidency for Bombay. The Development

Board now set up for Cawnpore was a body well under the control of the United Provinces Government and in addition to many functions ordinarily exercisable by the Municipal Board it was also empowered to make provision for town planning and river training. To provide against friction between the new board and the existing Local Authorities the new board was also enabled to assume "any other function of the Municipal Board, or any other function of the Cawnpore District Board, which the Provincial Government may hereinafter decide to transfer to the board." The board was given a President appointed by the Provincial Government and a comfortable Government majority. The Chief Executive Officer, the Chief Accountant and the Financial Adviser were all to be appointed by the Provincial Government. Any scheme involving expenditure in excess of ten lakhs of rupees required the approval of the Provincial Government. The board was entitled to raise loans in the open market by issue of debentures. Among the taxes which the board was authorized to impose was a betterment tax, being a tax "to be charged on the increase in the value of any land comprised in the scheme but not actually required for the execution thereof, or on the increase in the value of any land that is adjacent to and within one-quarter of a mile of the boundaries of such scheme." A special Tribunal of Appeal in respect of certain specified disputes including disputes arising out of the betterment tax was instituted and from its decisions an appeal lay to the Allahabad High Court (*a*) on a certificate granted by the Chairman of the Appeal Tribunal or (*b*) by special leave granted by the High Court. The grounds of appeal are expressly restricted by the Act.

**1946**

The first five enactments of the year were made by the Governor in exercise of the power assumed by him under s. 93 of the Government of India Act, 1935. All of them were minor amending Acts and call for no detailed description.

Act VI was the first enactment to be made by the revived Legislature when the operation of s. 93 was terminated. It is an "Act to amend the United Provinces Ministers' Salaries Act, 1937," and it raised the ministerial salaries from five hundred to fifteen hundred rupees per month with effect from April 1, 1946, by retrospective effect. The Bill received the assent of the Governor on May 23, 1946.

Act VII similarly increased the salaries of the United Provinces Legislature's Officers, and Act VIII increased the allowances of the members of the Legislature. Thus were relaxed the austerities imposed by the original Congress majority in 1937 and 1938.

Act IX made a minor amendment in the U.P. District Boards Act, 1922.

In addition to these enactments four Ordinances were made by the Governor in exercise of the powers conferred by s. 88 of the Government of India Act, 1935. These were emergency measures, the justification for having recourse to the special procedure being that immediate action was necessary at a time when the Legislature was not in session. Their duration was closely limited and they do not require detailed description.

## 6. PUNJAB

[It is hoped to publish the review in the next issue.]

## 7. BIHAR

[*Contributed by* KHAN BAHADUR KHALIBUR RAHMAN, B.A., LL.B., *Secretary to Government.*]

### *A. Acts*

DURING the year 1946, seventeen Acts were enacted, out of which Bihar Acts I to VIII were enacted by His Excellency the Governor of Bihar by virtue of

the legislative powers assumed to himself by the Proclamation, dated November 3, 1939, issued by him under s. 93 of the Government of India Act, 1935, and the rest were passed by the Provincial Legislature.

**Agricultural Statistics.**—No. I seeks to facilitate the collection of statistics relating to agriculture and for that purpose empowers the staff engaged on the crop survey to enter upon any land to be surveyed and to do any other act necessary for the ascertainment of the area, the nature and extent of crops standing thereon or the yield of crops therefrom.

**Sugar Factories.**—No. II provides that in villages where 66 per cent. of the cane-growers are members of a Cane-Growers' Co-operative Society, the remaining cane-growers shall supply cane to a sugar factory only through the agency of such society.

No. XII extends the operation of the Bihar Sugar Factories Control Act, 1937, till June 30, 1950.

**Forests.**—No. III empowers Government to take over suitable private forests for management as protected forests to prevent their wanton destruction.

**Municipalities and Local Self-Government.**—No. IV empowers municipalities to raise the water tax and certain fees at higher maximum rates to meet the increasing costs of the municipal administration.

Nos. VI and VII empower Government to appoint Executive Officers for municipalities and district boards with a view to securing a better discharge of their executive functions.

**Drug Advertisements.**—No. V seeks to control objectionable advertisements relating to cures for venereal and female diseases and sexual stimulants.

**Lands.**—No. VIII empowers Government to impose restrictions of the unregulated development of land with a view to prevent ribbon development and to regulate building activities in places where regular town planning operations have not been taken.

No. XVI enables Government to take into its own occupation for a maximum period of ten years, waste lands which have gone out of cultivation and have for the time being become unproductive and to restore it to cultivation and to recover the cost of the work from the persons benefited.

**Salaries.**—No. IX increases the salaries of the Ministers owing to the increased cost of living and as they will no longer draw their house and motor car allowances.

No. X increases the salaries of the officers of the Bihar Legislature owing to the increased cost of living.

No. XI revises the scale of salaries and allowances of members of the Bihar Legislature owing to the increase in the cost of living and to the fact that travelling has become more expensive.

**Tenancy.**—No. XIII amends the Bihar Tenancy Act, 1885, so as to make it clear that in the case of produce rents, the produce of holding which is to be shared by division between the landlord and the tenant is limited to grains only.

Nos. XIV and XV permit the average of the prices ruling in the five years before 1939 to be considered in commuting produce rents into cash rents instead of the period of ten years immediately before the date of applications for such commutation.

**Education.**—No. XVII amends the Bihar and Orissa Primary Education Act, 1919, in order to introduce compulsory education in a small compact area where the scheme of basic education is in operation as an experimental measure.

### *B. Ordinances*

EIGHT Ordinances were made and promulgated by H.E. the Governor of Bihar under subsection (1) of s. 88 of the Government of India Act, 1935, during the period under review.

**Molasses.**—No. I empowers Government to take measures for the control of

the distribution, price and export of molasses produced by sugar factories in Bihar in order to prevent profiteering in the commodity and to ensure its adequate supply to distilleries in the province at a reasonable price.

**Buildings.**—No. II seeks to continue the control of the letting of houses, the rent of such houses and any unreasonable eviction of tenants from such houses as the housing problem continues to be as acute as before.

**Essential Articles.**—No. III seeks to continue the control in respect of some of the essential articles as the consumer goods are not still freely available and the problem of distribution of such goods continues to be as acute as ever before.

**Public Order.**—Nos. IV and V arm Government with adequate powers to deal firmly with any grave emergencies such as those which arose recently in the Province.

**Emergency Harvesting.**—Nos. VI and VII empower Government to arrange for the harvesting of the paddy and other crops and the cultivation of the rabbi crops of those refugees who have left their homes as a result of the communal disturbances in November, 1946.

**Sugar Factories.**—No. VIII raises the maximum limits of cess leviable to 24 pies a maund.

All these Ordinances have since been enacted into Acts of the Provincial Legislature.

### *C. Regulations*

Two Regulations were made by H.E. the Governor under subsection (2) of s. 92 of the Government of India Act, 1935, during the period under review.

Regulation No. I makes certain formal amendments in the Parahat Estate Lands Regulation, 1944.

Regulation No. II applies, with retrospective effect, the Indian Explosives Act, 1884, to the Parahat Estate in the District of Singhbhum.

## 8. CENTRAL PROVINCES AND BERAR

[*Contributed by* S. A. PANDE, ESQ.]

DURING the year 1946 sixteen Acts were enacted. They are principally of interest only as illustrating special conditions caused by the late war.

**Revenue.**—Act I imposes a penalty in the Central Provinces not exceeding a sum calculated at the rate of fifty rupees per ton or fraction thereof on a person for illegal extraction or removal of minerals from mines or quarries the right of which has not been assigned by the Crown.

Act II imposes a similar penalty in Berar.

**Agriculture.**—Acts VI and VII seek to safeguard a loan granted under the Agriculturists Loans Act, 1884 (XII of 1884), to an agriculturist in contemplating land of the borrower being hypothecated as security for taccavi and making it a first charge on such land after land revenue or rent.

**Village Offices.**—Act VIII is designed to prevent a Watandar in Berar from escaping forfeiture of the hereditary rights of Watandar Village Officer on his or his substitute's conviction by a Court of Session or District Magistrate or by a Magistrate First Class for an offence committed in the discharge of his official duties.

**Public Order.**—Act X is designed to give Government the powers necessary for the adequate control of goondas during times of actual or apprehended communal clashes. Provision has been made in the Act to use such power only when it is absolutely essential to do so and the provisions of the Act become operative only when the Provincial Government issues a proclamation of emergency.

**Accommodation.**—Act XI regulates house rent and letting of accommodation

in such areas as may be notified. The Act remains in operation for a limited period of one year only.

**Control of Commodities**—Act XII controls distribution, sale, disposal, etc., of raw cotton produced either in India or outside India, non-ferrous metals, cement, drugs, medicines and any other articles as may be notified. This is a measure complementary to the Control measures issued by the Central Government to regulate trade in several commodities in the disturbed economy of the country in the after effects of the war.

**State Aid to Industries.**—Act XIV constitutes a Provincial Industries Committee with the Minister of Commerce and Industry as the President. It enhances the scale of Government assistance to industries. It also gives powers to the Provincial Government to form a limited company with the object of providing industrial credit and to appoint directors to control the conduct of industries in case the amount or value of the State aid given amounts to or exceeds one lakh of rupees or the face value of the shares held by the State exceeds 25 per cent. of the authorized share capital. The Act also enables the State to run an industry as a State monopoly or as a State-managed concern.

**Public Safety.**—Act XV gives power to the Provincial Government to make orders restricting the movements or actions of or detaining any person acting in a manner prejudicial to the public safety, order or tranquility, or fomenting or inciting strikes and to impose collective fines on inhabitants of areas concerned in or abetting the commission of the aforesaid offences. It also gives powers to the Provincial Government to control meetings, processions, camps, drill or parade.

## 9. ASSAM

[*Contributed by* S. M. LAHIRI, ESQ., M.A., B.L., *Secretary to Government.*]

**Finance.**—Act I fixes the rates at which Agricultural Income shall be taxed under the Assam Agricultural Income-tax Act, 1939.

**Revenue Tribunal.**—Act II provides for the Constitution of a Revenue Tribunal.

**Urban Areas Rent Control.**—Act III restricts temporarily the increase of rents of houses situated within the limits of urban areas in Assam.

**Motor Spirit.**—The Assam Sales of Motor Spirit and Lubricants Taxation (Second Amendment) Act, 1946. Act VII further amends the Assam Sales of Motor Spirit and Lubricants Taxation Act, 1939.

**Industrial Statistics.**—Act VIII makes further provisions for the purpose of facilitating the collection of statistics of certain kinds relating to industries and for validating certain acts already done in furtherance of such purpose.

## 10. NORTH WEST FRONTIER PROVINCE

[*Contributed by* SIR LANCELOT GRAHAM, K.C.S.I., K.C.I.E.]

DURING the year 1946 sixteen Acts were passed by the Legislature of the North West Frontier Province. Acts I, II, III, V, VII, IX, X and XIV effected only minor amendments in the Provincial Statute Book.

Act IV is "an Act to establish control on advertisements relating to medicines." The advertisements requiring control are those which recommend to the public (1) any preparation alleged to be for the prevention or cure of any venereal disease, (2) any preparation calculated to lead to its use for procuring miscarriage of women, or (3) advertising any premise for the treatment of venereal disease. The punishments provided may extend to six months' rigorous imprisonment for first offence and up to one year's rigorous imprisonment for any subsequent offence.

Act VIII is an Act to amend the Punjab Municipal Act, 1911, in its local application to the N.W.F.P. For the most part it introduces into the present Act as originally applied to the Province the extensive changes made in that Act by Punjab Act III of 1933 which did not apply " proprio vigore " to the N.W.F.P. The main point of interest lies not in the actual provisions of the amending legislation, but that these amendments were not applied to the N.W.F.P. until thirteen years after they were inserted in Punjab Act XIV of 1911 by the Punjab Legislature. The only matter in respect of which the N.W.F.P. appears to have gone in advance of the Punjab Legislature is that section which adds to the original offences of " beating a drum or tom-tom or sounding any brass or other instrument or utensil," the new offence of " the using of a loud speaker or other electrically operated means of producing noise "; such is progress.

Act XI is " an Act to provide for the Consolidation of Agricultural Holdings " and though not the first of its kind in India where the problem of unending subdivision of agricultural holdings has proved almost insoluble owing to the deadening pressure of custom, it contains some interesting provisions. In the definition section " consolidation of holdings " is defined as " the redistribution of all or any of the lands in an estate or sub-division of an estate so as to reduce the number of plots in the holdings." The chief executive officer for this purpose is the Consolidation Officer, who deals with the applications for consolidation, subject to an appeal to the Collector. The first step is required to be taken by " any two or more landowners in an estate." A second appeal to the Commissioner is not allowed where the Collector has confirmed the order of the Consolidation Officer. The jurisdiction of the Civil Courts is barred.

Act XII is " an Act to make provision for the Maintenance of certain essential services." This provides for " direction of labour " and applies to " all employment under the Crown and to any employment or class of employment which in the opinion of Government is essential for public safety, the maintenance of public order, or for maintaining supplies or services necessary to the life of the community."

Act XIII is " an Act to provide for the prevention of ribbon development and for the restriction of building near roads " in the N.W.F.P. The principal provision is contained in the definition of " controlled space " as " all land, whether alienated or otherwise and whether situated in their municipal limits or otherwise, lying in them such distance from the central line of a road as is specified in the schedule in respect of the road." No compensation may be claimed by reason of the fact that permission to build has been refused by the competent authority.

Act XV is " an Act to make provision for the control of rent of buildings." The proceedings of the Legislature should be read to discover the need for the elaboration of the law of bailment effected by Act XVI. The preamble merely states that it is expedient to encourage the establishment of central warehouses. The Act requires every warehouseman to take out a licence and to conduct his business in accordance with the terms of his licence " and the Act and the rules thereunder." A noteworthy provision is that " no warehouseman shall in the conduct of his business show any discrimination between persons desiring to avail themselves of his warehouses so as to prejudicially affect their interests." Statutory rules may provide among other things " generally for the efficient conduct of the business of a warehouseman."

## 11. ORISSA

[*Contributed by* R. L. NARASIMHAM, ESQ., I.C.S., *Secretary to Government.*]

DURING the year 1946 (from January to December) fifteen Acts were passed, the first being enacted during the period of Proclamation under s. 93 of the Government of India Act, 1935, and the rest being the Acts of the Provincial Legislature.

**Moratorium.**—The Madras Estates Land (Orissa Amendment) Act, No. I,

like Orissa Act I of 1945 it is the usual annual Moratorium Act (pending permanent amendment by Orissa Act XVII of 1947) providing for temporary protection of the occupancy rights of ryots in whole Inam villages and directing stay of proceedings in ejectment of such tenants up to March 31, 1947.

**Parliamentary Salaries.**—Acts II, III and IV provide for revision of salaries of Ministers, Speaker, Deputy Speaker and Members and for enhanced daily and travelling allowances.

**Entertainment Tax.**—No. V is a taxation measure imposing tax on amusements.

**Drug Advertisement Control.**—No. VI is a legislation for preventing and penalizing objectionable advertisements relating to certain drugs.

**Local Government.**—The object of No. VIII is principally to confer power on the Provincial Government to extend the period of reconstitution of the Municipal Council and to adopt the relevant portions of the electoral rolls prepared for the Orissa Legislative Assembly as the electoral rolls of the Municipality.

**Motor Spirit Taxation.**—Like Orissa Act V of 1946 No. IX is a taxation measure for imposing tax on the sale of motor spirit.

**Land Tenure.**—No. X is a measure in land tenure whereby all classes of tenants are given protection in respect of their homesteads.

**Civil Disabilities.**—No. XI is a measure of social amelioration. It purports to remove the civil disabilities of certain classes of Hindus—such disabilities having been imposed by social custom and usage of the Hindu community.

**Electricity.**—No. XII validates certain surcharges levied for supply of electrical energy to consumers.

**Court of Wards.**—Nos. XIII, XIV and XV amend the principal Acts on the subject in force in different parts of the Province of Orissa for better control and management of the Court of Wards.

Two Regulations were passed in the year 1946, namely: I. The Agency Rules (Orissa Amendment) Regulation; II. The Khondmals Laws (Amendment) Regulation. The first Regulation empowers the Provincial Government to transfer any suit, appeal or proceeding pending in any Agency Court in the Province of Orissa to any Civil Court in any other Province and extends certain other provisions of the Code of the Civil Procedure, 1908, as regards execution of decrees.

The second Regulation purports to bring into force the provisions of the Court-fees Act 1870 and the Indian Stamp Act, 1899, in the district of the Khondmals which is a partially excluded area of the Province.

Besides these Acts and Regulations five Ordinances under s. 88 of the Government of India Act, 1935, were promulgated for the control of drugs, cement, house rents, essential articles and private forests.

## 12. SIND

[*Contributed by* SIR LANCELOT GRAHAM, K.C.S.I., K.C.I.E.]

DURING the year 1946 eight Acts were passed in the Sind Legislature. Of these, Acts II, III, IV and VII effected only minor amendments in the Provincial Statute Book and call for no detailed description. Act I, which is " an Act to amend The Sind Zamindars Children Education Act, 1940," contains a few noteworthy provisions. It seems a little backward to continue to limit the definition of " child " to a male child. Failure on the part of a Zamindar to report to the Director of Education the birth or death of such child within fifteen days " of the occurrence " is made punishable with a substantial fine. Why failure to report death should be as serious an offence as failure to report birth is not easy to understand. The one omission tends to obstruct the operation of the Act, but surely this cannot be said of the other. More remarkable is the placing on the parent of the obligation " to secure the progress of a child in his studies " and

the power vested in the Director " to require the parent to take within a period, not exceeding one month, such measures as are in the Director's opinion calculated to improve the child's standard of proficiency," and also to penalize the parent in the event of failure.

Act V is " an Act to raise funds for the construction of buildings required for the Sind Muslim College." This provides for the levy of a cess " upon all lands in the Province which are alienated to, or occupied by, a Muslim or a Muslim Institution."

Act VIII is " an Act to define certain powers and privileges of the Sind Legislative Assembly and of its members." This is the Legislature constituted under the provisions of the Government of India Act, 1935, and the enactment requires detailed study. It contains thirty sections: the last of which vests a rule-making power in the Government of Sind and requires that all rules to be made under this power be laid in draft and be not put into operation until approved " either in the form of the draft or in any amended form agreed to by the Legislature." The customary immunities are granted to members of the Legislature and provision is made for constituting a Committee of Privileges " at the commencement of every session " and " according to the principle of proportional representation."

## 13. COORG

[*Contributed by* DIWAN BAHADUR K. CHENGAPPA, C.I.E., *Chief Commissioner of Coorg.*]

**Money-Lenders.**—Amendment of the Coorg Money-lenders Act, 1939. No. I provides that no Court shall, in any suit in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realized as interest through Court or otherwise, is greater than the amount of the loan advanced, or if the loan is based on a document, the amount of loan mentioned in the document on which the suit is based.

If a decree has already been passed on the basis of a debt and remains unsatisfied in whole or in part, the Court which passed the decree or any other competent Court shall, on the application of the judgment-debtor, amend it by reducing, in accordance with the above, the amount decreed on account of interest.

A decree amended in accordance with the above provisions shall be deemed to bear the date of the original decree, and, notwithstanding any provision in any law to the contrary, no appeal shall lie from any order amending a decree under the above subsection (2).

Any amount already received by the creditor on account of interest in excess of that due under this section shall be credited towards the principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

Statement of objects and reasons which led to the passing of the above Act. The question of relieving the agriculturist from indebtedness had been engaging the attention of all the Provincial Governments as well as States since as far back as 1936. For this purpose most of the Provincial Governments had passed various Acts, viz., Money-lenders Acts, Debtors' Protection Act, Temporary Postponement of Execution of Decrees Act, 1937 (U.P.), Small Holders' Relief Act, 1938 (Bombay), Agriculturists' Relief Act, 1938 (Madras), Debt Conciliation Acts, etc., etc. This Administration had also not been behind in this respect and had already passed the Coorg Money-lenders Act, 1939, and the Coorg Debt Conciliation Act, 1940. S. 8 of the former Act provides that if the interest charged per annum on loans exceeds 7½ per cent. simple interest in the case of secured loans and 12 per cent. in the case of unsecured loans, it shall be presumed that the interest charged is usurious.

At the debates in the Council of State on March 24, 1943, a resolution was moved on the subject of agricultural indebtedness in India and after much discussion, it was generally recognized that the subject matter of the resolution was primarily a concern of the Provincial Governments and outside the scope of the Central legislature unless it is empowered by means of a specific resolution of one or more Provincial legislatures to enact legislation for all the Provinces so desiring. The discussion on the resolution however revealed that in spite of the various measures passed by the Provincial Governments to solve the problem of agricultural indebtedness, the condition of the agriculturist debtors is still not very satisfactory; and that in order to ensure the prosperity of the country it is absolutely necessary that further steps should be taken to relieve them on the one hand of the heavy burden of debt and on the other to protect their lands from passing out of their hands. Though the conditions differ to some extent from province to province, the problem of rural indebtedness would appear to be more or less the same throughout the country. The Government of India therefore desired that, while most of the Provincial Governments had enacted legislation to enunciate the rates of interest which may be deemed usurious, different rates had been prescribed for secured and unsecured loans, the divergence ranging from 5 per cent to 18 per cent., and that uniformity in this matter could be achieved by the acceptance of the principle enshrined in the ancient law of Damdupat which lays down that the total payment of interest past and future should not exceed the principal and that when the amount of the original principal and equivalent amount of interest has been paid, the debt shall be deemed to have been discharged. The Government of India further stated that the law of Damdupat in this form had already been introduced in the Punjab, North-West Frontier Province and Madras and that there appeared to be no particular reason why it should not be made an all-India rule. They therefore requested that necessary legislation may be undertaken to give effect to this proposal.

The rule of Damdupat as in force in Coorg is that the interest recoverable at any one time cannot exceed the principal, that is, at the time of filing the suit the interest should not exceed the principal. In other words, interest paid in the past is not taken into account. According to the suggestion of the Government of India the total interest paid (past and present) should not exceed the principal. As this is a wholesome rule it was considered desirable to introduce it in Coorg also. Even as matters stand at present, the rule of Damdupat is applicable in Coorg only when the original debtor is a Hindu. But when the rule is embodied in a legislative enactment it automatically applies to persons of all communities.

In introducing this rule one point was considered, viz., whether this rule had to be applied only to debts incurred by an agriculturist or to all debts in general. No doubt the neighbouring Province of Madras has made this rule applicable only to agricultural debts, but Madras is different from Coorg. In Coorg three-fourths of the debts, if not more, are agricultural and it was therefore considered not necessary to single out agricultural debts from other debts, as in effect this will mean nothing. This Act is intended to give effect to the above proposal.

## 14. BURMA

[*Contributed by* G. R. Rajagopaul, Esq., M.B.E., *Chief Judge, Rangoon City Civil Court.*]

After a brief period of military administration in 1945 civil government was re-established in Burma in October, 1945, but the Proclamation, dated December 10, 1942, suspending the Constitution Act continued to be in force. By the Government of Burma (Temporary Provisions) Act, 1945, Parliament, however, authorized the Governor to provide for the constitution of such councils, bodies

or other authorities as may be desired for the purpose of associating such councils, bodies or authorities with the Governor in the exercise of his functions. In virtue of this power the Governor issued a Proclamation whereby an executive council was created to assist and advise the Governor in the exercise of his duties, powers and functions generally, and also a legislative council of not more than 50 members consisting of the executive councillors and other members nominated by the Governor to advise him in the exercise of the legislative powers vested in the Governor under the Proclamation of 1942. These bodies functioned during a greater part of 1946.

As a result of the war and the temporary occupation of Burma by the enemy many novel problems had to be tackled and much of the output of legislation for the year 1946 was concerned with meeting such new problems.

Fifty Acts were passed during the year and some of the more important Acts are discussed below.

**Patents.**—No. I continued to give effect in British Burma to the Indian Patents and Designs Act, 1911, until such time as the consolidating Act passed for Burma in 1945 could be put into operation. This stop-gap provision was necessary because of the lack of administrative machinery in Burma.

**Town Planning.**—No. II sought to provide for schemed town planning—an object which could be achieved somewhat with greater ease as many a town in Burma had suffered extensive damage during the war.

**Local Authorities.**—No. III recognized the fact that it was impracticable to hold elections for the re-constitution of local authorities in Burma and therefore provided for the suspension of such authorities and for the carrying on of their functions through Government nominees until such times as elections could be held.

**Judiciary.**—The Special Judges Act of 1943 was re-enacted in a slightly more comprehensive form by No. IX by which all Sessions Judges and Additional Sessions Judges became Special Judges by virtue of their offices. As before, the Act provided for the speedy trial of criminal offences.

**Termination of War.**—By the Present War Termination (Definition) Act, 1946, No. XII, the Governor was enabled to declare the date of termination of the present war, and under this provision the Governor has declared that the present war shall be deemed to have terminated on February 1, 1947.

**Limitation of Actions.**—An amendment to the Courts (Emergency Provisions) Act of 1943 declared that civil Courts shall be deemed to be closed till March 31, 1947, so as to stop limitation from running till the prescribed date.

**Rent Control.**—The Tenancy Act, No. XXI, was a peace-time measure drafted by the Government while in exile in Simla and it was formally enacted during the year. It provided for the determination of standard rents in respect of tenancies and also placed restrictions on the disposal thereof.

The Urban Rent Control Act, No. XXXIV, attempted to stop the racketeering in rent which was going on in urban areas by reason of shortage of accommodation. This Act rendered the taking of *salami* punishable and provided for the determination of standard rents. Further, tenants obtained very valuable rights in the matter of ejectment.

**Currency.**—The Currency Notes Act, No. XXV, later repealed during the year, authorized the Governor to manage the currency of Burma and declared that with the exception of notes of Rs. 1,000/– and 10,000/– denomination Burma notes and India notes shall be legal tender in British Burma.

The Currency and Coinage Act, No. XLV, constituted a board called the Currency Board in which was vested the management of the currency of Burma. This board is under an obligation to issue and redeem Burma currency in exchange for sterling. This Act repealed the Currency Notes Act mentioned earlier.

**Crime.**—By the Sanction for Prosecution (War-time Offences) Act, No. XXVI, it was provided that prosecutions in respect of criminal offences alleged to have

been committed during the war shall not be instituted without the sanction of the Governor.

By the War-time Crimes (Exemption) Act, No. XLVII, protection was afforded to persons who had acted in good faith in the defence of persons or property or under the order of any organization or committee which was constituted during the "intervening period"—an expression which was defined to mean either the period commencing with the cessation of the British administration and ending with the establishment of the new administration under the Japanese military authority or the period commencing with the cessation of the Burmese administration set up during the Japanese military occupation of Burma and ending with the establishment of the British military administration, as the case may be.

**Legislature.**—The Burma Legislature (Removal of Disqualifications) Act, No. XXVIII, enabled persons holding any office of profit under the Crown to be members of the interim legislative council constituted under the Proclamation issued in 1945.

**Leases.**—The Monthly Leases Termination Act, No. XLIX, provided that if a lessee ceased to occupy or be in possession of immovable property by reason of the occupation by the enemy of the place where the immovable property which is the subject of the lease is situate the lease shall be deemed to have been determined with effect from the end of the month in which the lessee had ceased to occupy or be in possession of the property.

**Pensions.**—The last Act passed during the year repealed the Political Pensions Act under which political pensions were being granted to descendants of the former rulers of Burma.

## VIII. EASTERN COUNTRIES

### 1. CEYLON

[*Contributed by* T. NADARAJA, ESQ., *Lecturer in Law, Ceylon University.*]

IN any review for 1946 of legislation applicable to Ceylon, there must first be mentioned the Ceylon (Constitution) Order in Council promulgating a new Constitution for the island. The general structure of this Constitution, which introduced into Ceylon a Cabinet system of government and a second legislative chamber, is so well-known that it is unnecessary, even if it were possible in a short space, to attempt to summarize its main features. In connection with the Ceylon (Constitution) Order in Council, there must also be mentioned the Ceylon (Parliamentary Elections) Order in Council of 1946 by which provision was made for the election of members to the lower legislative House.

In 1946 63 Ordinances were enacted in Ceylon, the majority of which were amending Ordinances. A feature of the legislation of the year was the enactment of a large number of Ordinances incorporating private associations and other organizations.

The following were the principal Ordinances of 1946:—

**Town Councils.**—No. 3 makes provision for the establishment of new local authorities to be known as Town Councils, in areas proclaimed by the Governor. It is based on the Urban Councils Ordinance (No. 61 of 1939), and reproduces many of the provisions of the latter with some amendments.

**Entertainment Tax.**—No. 12 enables local authorities to impose a tax on payments for admission to certain public entertainments (cinema shows, stage plays, concerts, recitals, circuses and variety shows) within their administrative areas. The tax is to be imposed at a rate of not less than 5 per cent. or more than 25 per cent. of payments for admission, and special provision is made for the exemption (in cases to be defined by regulations made by the Executive Com-

mittee of Local Administration) from the tax of payments for admission to entertainments in aid of charitable, educational and similar purposes.

**Town and Country Planning.**—No. 13, which is modelled on the British Town and Country Planning Act of 1932, is designed to confer on local authorities, acting with the advice and under the supervision of a Central Planning Commission and of the Department of the Government Town Planner, the powers necessary to regulate and control the planning and development of land in both urban and rural areas.

**Rating and Valuation.**—No. 30 is a comprehensive measure dealing with the imposition and collection of rates by local authorities, and the valuation of property for those purposes. Hitherto such matters have been dealt with in the different Ordinances under which the various local authorities were constituted, and there has consequently been no uniformity in either the law or the practice applicable.

**Irrigation.**—No. 32 amends and consolidates the existing law relating to irrigation, on the basis of suggestions made by the Committee appointed to investigate the revision of the existing Irrigation Ordinance.

**Weights and Measures.**—No. 37 amends and consolidates the law relating to weights and measures, and weighing and measuring instruments.

**Official Publications.**—No. 47 provides immunity from civil or criminal proceedings to persons who publish, without malice, official reports or documents ordered to be published for general information by the Governor.

**Local Authorities.**—No. 53 enacts a new body of law applicable to elections to Municipal Councils, Urban Councils, Town Councils, and Village Committees. The conduct of elections is placed in charge of a new central authority to be called the Commissioner of Elections (Local Bodies) and appointed by the Governor.

The subsidiary legislation of 1946 was concerned for the most part with the amendment of existing subsidiary legislation or with the application of existing legislation into new areas. The only important new matter was a set of regulations relating to maternity benefits (which replaced an earlier set of regulations), a comprehensive set of rules under the Probation of Offenders Ordinance (No. 42 of 1944), and a number of Orders and Notifications under the Wages Boards Ordinance (No. 27 of 1941) relating to wages, hours of work and holidays in various trades.

## 2. BRITISH MALAYA

[*Contributed by* Dr. A. de Mello.]

**1946**

### I. THE NEW CONSTITUTIONS

With the Japanese occupation of Malaya in 1942 began the iron rule of a ruthless military power. Its duration for the space of 3½ years engendered a deeper appreciation, on the part of the population, of fundamental values than had been manifested during the peaceful and prosperous era that had gone before. The Malays learnt to cherish more their own institutions, and were awakened to a new incipient feeling of independence and unity transcending the boundaries of the individual States. The harshness and discriminatory impulses, however, that had characterized Japanese dominion had aroused and exacerbated racial feelings.

Hence, whilst the forces of the Supreme Allied Commander, South-East Asia (Admiral Lord Mountbatten) were engaged, in September, 1945, in re-occupying Malaya, His Majesty's Government in London were considering what form of comprehensive post-war constitution would be suitable to the various territories of the Peninsula. It was felt that the system of government needed to be simplified in view of the increasing complexity of modern administrative, economic, and

social developments, and that progress in the direction of responsible self-government would be hampered unless the pre-war system was reformed. In short, it was considered that a closer integration of the many separate political units (British Settlements and Malay States) was required, with this reservation, however, that Singapore, as a centre of a large *entrepôt* trade, and as possessing economic and social interests distinct from those of the mainland, required, at least for the present, separate treatment.

It was decided that these aims could be achieved by (1) combining the nine protected Malay States, i.e. the four "federated" States (Negri Sembilan, Pahang, Perak, and Selangor), and the five "unfederated" States (Johore, Kedah, Kelantan, Perlis and Trengganu) with the two British Settlements of Penang and Malacca, into a single territory, to be known as the "Malayan Union"; (2) the creation of a common form of Malayan citizenship, giving equal citizenship rights to all those irrespective of race who regarded Malaya as their true home and as the object of their loyalty, and who should, in consequence, have the opportunity of a due share in the country's political and cultural institutions.

The implementation of this policy had necessarily to be a gradual process. As a first step towards it, His Majesty had to be vested with plenary jurisdiction (which he did not yet possess) in the Malay States, to enable him to legislate for all the States alike under the Foreign Jurisdiction Act, 1890.[1] Accordingly, Sir Harold MacMichael[2] was appointed Special Representative of His Majesty's Government to visit Malaya and conclude with each of the Malay Rulers formal Agreements by which they ceded full power and jurisdiction in their respective States to His Majesty. In January, 1946, Sir Harold MacMichael returned to England, and was able to report that he had successfully concluded such Agreements.

The next step in the effectuation of the policy was the repeal of the Government of the Straits Settlements Act, 1866,[3] which was done on March 26, 1946, by the Straits Settlements (Repeal) Act, 1946,[4] providing that these three Settlements—Singapore, Penang and Malacca—should cease hereafter to be a single composite Colony (as they had been since their separation from British India in 1867), and should be divided into such territories as His Majesty might direct.

This opened the way to the third step, which was twofold. On March 27, 1946, were issued two Orders in Council, creating as from April 1, 1946, two new administrative entities, each with a separate constitution, thus:

A.—The Singapore Colony Order in Council, 1946,[5] establishing the Colony of Singapore, composed of the Island of Singapore and its dependencies, the Cocos-Keeling Islands, and Christmas Island;[6]

B.—The Malayan Union Order in Council, 1946,[7] establishing the "Malayan Union," composed of the nine Malay States, with the two Settlements of Penang and Malacca.

The Constitutions thus promulgated did not, however, either in Singapore or in the Malayan Union, at once come into force in their entirety. They were to do so by two stages, the first of which, begun on April 1, 1946, was partial and temporary, and aimed at sounding public opinion in the Peninsula on the new problems (such as the Malayan Union citizenship, election of representatives to

[1] Statute 53 & 54 Vict., c. 37.
[2] Formerly High Commissioner for Palestine.
[3] Statute 29 & 30 Vict., c. 115.
[4] Statute 9 & 10 Geo. 6, c. 37.
[5] Issued under the British Settlements Acts, 1887–1945 (50 & 51 Vict., c. 54, and 9 & 10 Geo. 6, c. 7).
[6] The Order in Council had, at first, also provisionally included the island of Labuan (situated off the northern coast of Borneo) in the *Colony* of Singapore, as it had, since January 1, 1907, formed part of the *Settlement* of Singapore; but by the "Labuan Order in Council" of July 10, 1946, it was separated out, and integrated, as from July 15, 1946, into the new "Colony of North Borneo."
[7] Issued under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict., c. 37).

the Legislative Councils, a wider Federation of Malaya embracing Singapore, etc.) presented by the reserved portions. The bringing into operation of these latter portions,[8] in their original or modified form, was therefore held over for a second and later stage, and was to depend upon the practical solutions that local consultations would suggest.

It is proposed to summarize here the salient provisions of the Constitutions successively for Singapore and the Malayan Union, as laid down in the two Orders in Council of March 27, 1946, and the criticisms to which they gave rise.

## A.—Colony of Singapore

The Singapore Colony Order in Council, 1946, reproduces, in the main, the essential features of the constitution[9] of the defunct "Straits Settlements" Colony: only its innovations call for special notice.

**Legislative Council.**—The British Settlements Acts, 1887 and 1945,[10] under which the Order was made, empower the Crown—

> "To establish such laws and institutions . . . as may appear to be necessary for the peace, order, and good government of His Majesty's subjects and others within any British Settlement."[11]

The Order (s. 28) delegates such power to the Governor, acting "with the advice and consent of the Legislative Council" of the Colony.[12]

This Council, as set forth in the original Order, was to consist of the Governor as President, and 22 other members, thus:—

(i) Four *ex officio* Members, viz. the Colonial Secretary, the Attorney-General, the Financial Secretary, and the President of the Municipality of Singapore Town;

(ii) Nine Nominated Members, comprising—
  (*a*) not exceeding seven Official Members (appointed by the Governor from among persons holding offices of emolument under the Crown);
  (*b*) not exceeding two Unofficial Members (appointed by the Governor from among British Subjects, or "Malayan Union citizens," of the age of 21 years or upwards).

(iii) Nine Elected Members—British Subjects of the age of 21 years or upwards, not holding any office of emolument under the Crown, qualified as voters,[13] and able to read, write, and speak English well enough to take part in the Council's activities.

A common-form clause also confers reserved powers upon the Governor "in the interests of public order, public faith, or good government" (s. 30), which phrase is defined, in particular, to include—

[8] That is, the portions which relate (*a*) in the *Singapore Colony*, to the form and composition of the Executive and Legislative Councils (*vide* ss. 1, 13, and 16 to 39, inclusive, of the Singapore Colony Order in Council, 1946); (*b*) in the *Malayan Union*, to the form and composition of the Council of Sultans, the State and Settlement Councils, and the Sultan's Advisory Councils for each State (*vide* ss. 1, 13, and 16 to 84, inclusive, of the Malayan Union Order in Council, 1946).

[9] As contained in (1) the Letters Patent of February 17, 1911, constituting the office of Governor and Commander-in-Chief of the Straits Settlements; (2) the Amendment, dated August 18, 1924, of ss. vii and xv thereof; (3) the Instructions, also of August 18, 1924, to the Governor and Commander-in-Chief; (4) the Standing Orders, dated June 1, 1925, of the Legislative Council.

[10] Statutes 50 & 51 Vict., c. 54, and 9 & 10 Geo. 6, c. 7.

[11] This power may be delegated, but the right to legislate by Order in Council is reserved.

[12] Legislation for the Colony may this be effected, as in the past, by (*a*) Acts (commonly called "Statutes") of the Imperial Parliament; (*b*) Orders of His Majesty the King in Council; (*c*) Ordinances of the Legislative Council of the Colony.

[13] The qualifications of voters, the mode of registering their votes, and all other incidental matters, have since been provided for in a special law, viz., the Singapore Legislative Council Elections Ordinance, No. 24 of 1947, enacted on July 14, 1947.

(*a*) foreign relations and relations with other parts of the British Empire;
(*b*) defence;
(*c*) subjects requiring uniformity of legislation between the Colony and the Malayan Union;
(*d*) matters pertaining to the creation or abolition of any public office, and to the appointment, salary or other conditions of service of public officers.

The composition of this Council, and the mode of appointment of its members, particularly the Elected Members, evoked during the first or preliminary, phase of the Constitution, abundant criticism from the various communities of Malaya. It will be observed that the membership is equally official and unofficial (11 of each), but the majority (13 against 9) are nominated. The Governor has the casting vote (s. 29).

Very early in the first stage of the Order, a Committee was appointed, on April 11, 1946, to report and make recommendations on the organization of elections to the Legislative Council. The chief recommendations made in their Report (August, 1946) were that (*a*) six of the nine Elected Members should be chosen by territorial, and not communal, constituencies, and the other three by the European, Chinese and Indian Chambers of Commerce: (*b*) voting should be by universal adult suffrage of persons above the age of 21 years.

The Secretary of State for the Colonies, on considering this Report, decided that the composition of the Council be altered so as to create an Unofficial majority (13, against 11 officials) by reducing the Official Nominated Members from seven to five, and increasing the Unofficial Nominated Members from two to four. As the Report rejected the communal basis for elections to the Council, it was necessary to raise the maximum of two elected members, originally provided for by the Order, to four, in the interests of any section of the community that might otherwise be represented inadequately or not at all. This has, in turn, however, brought forth the comment that the official element will nevertheless predominate, as a Nominated Member is, from the day of his nomination, bound to be a " yes-man."[14]

**Executive Council.**—The new Singapore Colony, like its predecessor, the " Straits Settlements," is to be governed on behalf of the Crown by the Governor, assisted by an Executive Council, the constitution of which is set out in the Royal Instructions to the Governor[15] (ss. 3 to 12). It is to consist (s. 3) of the Governor, as Chairman, and 10 members, viz.—

Four *ex officio* Members (as for the Legislative Council),[16] the Colonial Secretary, the Attorney-General, the Financial Secretary, and the President of the Municipality of Singapore Town.

Six other members, to be appointed by the Governor, thus—

Two Official (i.e. holding offices of emolument under the Crown); and
Four Unofficials (i.e. not holding such office).

The Governor, in the exercise of his powers and authorities, has to consult the Executive Council, except in unimportant or urgent matters, or such as would sustain material prejudice by consultation. But though so bound to *consult*, he is not bound to follow their advice, and may act in opposition thereto:[17] and hence the term " Governor-in-Council " is defined (by s. 2 of the Order) as " the Governor acting after consultation with, but not necessarily in accordance with

[14] To which the rejoinder has been made, based apparently on experience in other Colonies, that a Nominated Unofficial Member will eagerly endeavour to maintain the people's confidence in him, as they may eventually be his electors; and, in certain cases, to have been refused re-nomination by the Governor may be a valuable electoral asset to him when he contests an open constituency (Cf. M. Wright, *Development of the Legislative Council*, 1606–1945, published by Oxford Institute of Colonial Studies).

[15] Dated the same date (March 27, 1946) as the Order in Council.

[16] *Vide supra*, p. 138.

[17] Similar provisions (which are indeed common-form clauses) existed in the Instructions of August 18, 1924, to the Governor of the Straits Settlements (see ss. xii and xiv thereof).

the advice of, the Executive Council, nor necessarily in such Council assembled."

**Advisory Council.**—While the formation of the Legislative and Executive Councils was held in abeyance during the first, or preliminary, stage of the Constitution, the Governor exercised his powers, whether legislative or administrative, with the assistance and advice of an " Advisory Council " (ss. 40 and 41), comprising the Colonial Secretary, the Attorney-General, the Financial Secretary, and such other persons[18] as the Governor might appoint. The Governor might make laws " for the peace, order and good government of the Colony," and in doing so, was to *consult* the Advisory Council (s. 40): he was also entitled to submit questions to them for their advice: but, in either case, he was empowered to " act in opposition to their advice, if he deemed it right to do so."[19] (s. 41).

## B.—Malayan Union

The effect of the Malayan Union Order in Council, of March 27, 1946, was to establish a Constitution which would, had it ever been brought into force in its entirety, have consisted of:—

(i) a Governor;
(ii) an Executive Council (s. 13);
(iii) a Legislative Council, comprising the Governor, as President, and *ex officio,* official and unofficial, members to a total of 42 (s. 16). These members were to be appointed by the Governor, and there was to be a balance between officials and unofficials, the Governor having a casting vote.

There was also to be, in each State, a State Council, and in each Settlement a Settlement Council (ss. 47 to 71), with power to legislate on matters of a purely local nature in the State or Settlement, or on matters in respect of which legislative powers had been delegated to it by the Legislative Council (s. 49). Each State and Settlement Council was to consist of the Resident Commissioner as Chairman, and such *ex officio,* nominated Official and nominated Unofficial, Members, as might be prescribed by local legislation (s. 48).

There was also to have been a Central Council of Sultans (ss. 38 to 46) with advisory functions, and a Sultan's Advisory Council in each State (ss. 72 to 84), which was to have certain advisory powers and also power to legislate on matters of Mohammedan religion.

In fact, as already observed,[20] this Constitution too, like that of the Colony of Singapore, was never fully brought into force, and the " Malayan Union " has, in the meantime, been governed under transitional provisions (ss. 85 to 91) by the Governor by an Advisory Council.

The Order in Council vested (ss. 92, 93) in His Majesty, for the purposes of the government of the " Malayan Union," certain Straits Settlements property, and also all property including land, which had previously been vested in the Rulers for the purposes of the government of the Malay States.

The creation of the " Malayan Union " was the subject of much adverse comment in the Peninsula as well as in England. In the Peninsula itself the Malays expressed their deep concern over fundamental changes in policy which were being threatened without that degree of local consultation to which they

[18] In practice, these " other persons " have numbered 17 (i.e., seven Officials and ten Unofficials—professional and business men, drawn from all races—four Chinese, three European, two Indian, and one Malay. Consulted as they were in open and secret sessions, and possessing the privilege of raising questions, they proved a useful sounding-board for public opinion on controversial matters. The Government proposal for income tax in November, 1946, had, for instance, to be withdrawn, in the face of the unanimous opposition of the Unofficial Members of this Council.

[19] New Income-tax Bills in 1947, both in the Colony and in the Malayan Union, in fact, only became law through the Governors in each territory acting in opposition to the advice of their Advisory Councils.

[20] See *supra* p. 137.

considered themselves entitled. Their criticisms were directed not so much at the idea of closer integration of the Malay States, as at the form and manner in which the proposals had been presented, and at the loss of the sovereign rights, prerogatives and powers of the Rulers of the States, and the destruction of Malay rule as it had been immediately prior to the Japanese invasion. They contended that the creation of the " Malayan Union " tended to convert the Malay States into a Crown Colony for all practical purposes except that of nationality. This opposition culminated in the abstention of the Malay representatives from the work of the Councils established by the Order-in-Council. Discussions between the Governor-General, the Governor, the Rulers of the States and the recently formed " United Malays National Organization " made clear the feeling that no alternative to the " Malayan Union " would be acceptable which denied to the Rulers power in their own States as constitutional Rulers and which imperilled the individuality of those States in the larger body in which they were merged by the Order-in-Council.

The MacMichael Agreements were also adversely criticized in the debates in Parliament,[21] as well as in letters to the London Press emanating from retired Malayan officials and professional men who had long resided in Malaya. Two members of the House of Commons[22] visited Malaya to collect first-hand information from personal observation. And finally, on July 25, 1946, a Working Committee was appointed in Kuala Lumpur, consisting of representatives of the Government, of the Rulers of the nine Malay States and of the " United Malays National Organization " to prepare a fresh provisional and constitutional scheme which would be acceptable to Malay opinion, and, at the same time, provide a more efficient administration, and form the basis of future political and constitutional developments.

This Working Committee submitted its Report in December, 1946, embodying its proposals which, in outline, are as follows:—

(*a*) that there be established a Federation to be called " the Federation of Malaya," consisting of the nine Malay States, and the two Settlements, Malacca and Penang;

(*b*) that this Federation be established by a Federation Agreement to be entered into between His Majesty and the Rulers of the nine Malay States, after the conclusion of the State Agreements next mentioned, and embodying *inter alia* the provisions hereinafter mentioned in (*e*);

(*c*) that His Majesty should enter into new State Agreements, superseding all previous Agreements (including, in particular, the MacMichael Agreements) and restoring to the several Rulers internal sovereignty in their respective States, and that the Malayan Union Order in Council of March 27, 1946, be revoked;

(*d*) that the State Agreements and the Federation Agreement should expressly preserve His Majesty's jurisdiction to regulate all matters of defence and the external affairs of the Malay States, and maintain intact the power of advising the several Rulers on all matters of Government other than those relating to the Muslim religion, and the Customs of the Malays;

(*e*) that the Federation Agreement should provide for—

(i) a High Commissioner to be appointed by His Majesty;

(ii) a Federal Executive Council;

(iii) a Federal Legislative Council, consisting of the High Commissioner as President, and 48 members with a strong representation of the States and Settlements, and an unofficial majority;

[21] *Vide* Hansards' *Parliamentary Debates* (*House of Commons*). Vol. 420. No. 98. Pp. 640–729.

[22] Mr. L. D. Gammons (Conservative M.P. for Hornsey and ex-Malayan Civil Servant, and Mr. D. R. Rees-Williams (Labour M.P. for South Croydon, now Under-Secretary of State for the Colonies, formerly a Solicitor practising in Penang).

(iv) a State Executive Council in each State, and a Council of State with legislative powers;
(v) a Settlement Council in each of the two Settlements, with legislative and administrative powers;
(vi) a Conference of Rulers, to consult with each other and with the High Commissioner on matters of State and Federal concern;
(vii) a Supreme Court of the Federation, and subordinate Courts; and
(viii) Federal citizenship.

As these proposals had been formulated between the representatives of the Government and Malay leaders alone, it was only natural that the other interested communities in Malaya should be given a full and free opportunity of expressing their views.

Accordingly the Governor of the Malayan Union in December, 1946, appointed a Consultative Committee, composed of influential representatives of non-Malay communities to report and make recommendations. This Committee presented its Report at the end of March, 1947, which, while endorsing the retention of the main structure of the Federation proposals, and the greater proportion of the detailed arrangements, recommended a considerable increase in the size of the Federal Legislative Council, a different distribution of seats among the various communities, and certain modifications in the provisions for citizenship.

Further discussions with the representatives of the Rulers and of the " United Malays National Organization " were arranged by re-convening, on April 17, 1947, the Working Committee, which had produced in December, 1946, the original draft Federation and State Agreements. This re-convened Working Committee considered the amendments proposed by the Consultative Committee, and reported in turn to a Plenary Conference of the Government and the Rulers and other Malay representatives on April 24, 1947.

From these various consultations has finally emerged a Federation scheme which, it is expected, will be embodied in a new Order in Council to be substituted for that of March 27, 1946, and brought into force on February 1, 1948.

## II. LOCAL LEGISLATION

ORDINANCES passed from April 1 to December 31, 1946: Singapore, 42; Malayan Union, 37.

Upon the British Military Administration handing over, on April 1, 1946, to the Civil Authorities the government of the two territories—the Singapore Colony, and the Malayan Union—comprised in the Peninsula, the legislation in each was, pending the definite formation of Legislative Councils, enacted by the Governor, after consultation with his Advisory Council.[23]

It opened, in each territory, with an " Indemnity and Validating " Ordinance, designed to restrict legal proceedings in respect of acts done or payments made *bonâ fide* during the war period (i.e. from December 8, 1941, to December 31, 1946), at validating proclamations, orders and legislative acts of the British and Allied Military authorities, and the judgments and order of their Military Courts during the same period.

The remaining Ordinances of the last nine months of the year were either of a purely transitional nature, or were aimed essentially at rehabilitating the country from the ravages resulting from the war and the Japanese occupation, at repressing lawlessness (particularly, crimes with the use of fire-arms, and thefts of motor vehicles) that threatened to increase in alarming proportions, at controlling the almost equally alarming rise in the cost of living, house rents, and prices generally, and at devising a solution of the housing crisis, which, though acute elsewhere, has been intensified in Malaya through belligerent operations in, and consequent immigration from, adjacent countries.

[23] See *supra* pp. 139, 140.

## 3. MAURITIUS

[*Contributed by* FRANCIS HERCHENRODER, ESQ., *Procureur General.*]

SEVENTY-SIX Ordinances were passed by the Council of Government and assented to by the Governor during the year 1946.

The majority of these Ordinances deal with matters of domestic concern of which the following are the more important:—

**Criminal Law.**—The Penal Code (Amendment) Ordinance, 1946. No. 17 removes from the statute book a provision which was out of date, namely, Article 210 of the Penal Code restricting the free formation of political or religious associations, and of literary or other societies.

**Criminal Appeal.**—Under the law of the Colony, any person convicted and sentenced to imprisonment or to pay a fine of Rs. 50 or more by a District Court may appeal against such conviction and sentence to the Supreme Court. In practice, the right of appeal could only be exercised by persons who could afford the necessary expenses. No. 19 was passed to ensure that, in deserving cases, poor persons will be given the necessary facilities to appeal to the Supreme Court from conviction by the lower Courts.

**Road Traffic.**—The Road Traffic Ordinance, 1939 (Ordinance No. 71 of 1939), provides for the complete control of road traffic and transport facilities throughout the Colony and the conditions under which public conveyance may be effected.

Ordinance No. 44 amends that Ordinance as a result of experience acquired during the seven years which have elapsed since it was enacted.

The main objects of the amendments are:—

(1) to render more effective the Police control over the use of unlicensed motor vehicles;
(2) to confer upon the Commissioner of Police power to refuse the grant or renewal of a driving licence to a person who, by his conduct, has shown himself to be unfit for being the holder of a licence;
(3) to exempt from licence duty under certain conditions motor vehicles used solely for agricultural purposes; and
(4) to effect a reduction in the categories of public service vehicles licences and ensure that public service vehicles shall, prior to the issue of a licence, satisfy the prescribed requirements as to fitness and insurance.

**Liquor.**—No. 57 is one of the initial steps taken by the Government towards the gradual reduction of alcoholism in the Colony. It provides for the better control of, and greater restriction over, the sale of rum. Powers have been taken to limit the quantity of rum which may be sold in any year and the number of licences which may be issued for the sale of rum.

**Probation of Offenders.**—By No. 58 the system of probation has been introduced as part of the penal administration of the Colony. It empowers the Courts, by making probation orders, to place offenders under the supervision of probation officers instead of sentencing them to a penalty. Probation orders may be made for a period of not less than one year and not more than three years and the Court may impose conditions as to residence and other matters considered necessary for securing the good conduct of the offenders; those conditions may be varied by the Court. Provision is also made for the appointment of suitable probation officers, and for the procedure to be followed in the event of a probationer failing to comply with any of the provisions of his probation order or being convicted for some offence while the probation order is still in force.

**Unofficial Uniforms.**—No. 59 empowers the Governor to prohibit the wearing or display of certain distinctive dresses, apparel or emblems with a view to preventing disturbances of the public peace.

**Court Fees.**—The laws and rules relating to costs of proceedings before the Courts of the Colony were numerous and out of date. No. 60 implements the recommendations of a Committee appointed in 1944 under the chairmanship of

the Chief Justice of the Colony: it groups under one Ordinance the various enactments relating to law costs and at the same time revises the scales thereof.

**Dangerous Drugs.**—The difficulties experienced by Police officers when raiding suspected opium dens owing to the premises being bolted and equipped with all sorts of contrivances, and having to be forced open, thereby allowing ample time for the destruction of incriminating evidence, led to the passing of Ordinance No. 64.

The Ordinance provides that in certain circumstances which are set out in its provisions, it will be presumed that premises are used as opium dens and that the occupiers thereof have permitted such use.

**Public Meetings and Processions.**—No. 65 provides for the control to be exercised over the holding of public meetings or processions. No special authorization is required but the organizers of a public meeting or procession must previously notify the Commissioner of Police of their intention to hold it. The Governor is given power to prohibit any public meeting or procession which, in his opinion, would be likely to cause a disturbance of public order or to promote disaffection. The Commissioner of Police, also, is authorized, in certain cases, to impose certain restrictions and conditions for the preservation of public order.

**Graduated Poll Tax.**—No. 69, which is based on the United Kingdom Income Tax Act, 1945, makes important changes with respect to the liability to tax under the Graduated Poll Tax Ordinance, 1939. (Ordinance No. 36 of 1939.) It provides for the grant of an initial allowance in respect of expenditure on new industrial buildings and new machinery or plant and introduces the principle of making annual allowances for depreciation or wear and tear.

**Tobacco Production and Marketing.**—The production and sale of leaf tobacco in the Colony is regulated by the Tobacco Production and Marketing Ordinance, 1943 (Ordinance No. 13 of 1943), and control is vested in a Tobacco Board constituted under the Ordinance and presided over by the Director of Agriculture.

Ordinance No. 6 makes certain minor amendments to the principal Ordinance in the light of experience gained, and gives additional powers to the Tobacco Board for the establishment of research stations and laboratories.

**Cyclone and Drought Insurance.**—The staple crop of the Colony, sugarcane, has, from time to time, been severely affected by drought and by cyclones. No. 53 introduces a scheme of compulsory insurance against these calamities and establishes a Fund (to be administered by a board) from which compensation in respect of cyclone or drought damage will be paid. Subject to certain deductions for which provision is made in the Ordinance, Estates with factories, millers and planters will contribute to the Fund an annual premium of 4½ per cent. of the value of the average quantity of sugar which accrued to them during the preceding three normal years of production. The annual premium may be reduced by the Governor, after consultation with the board, if the assets of the Fund are at any time in excess of the amount which is considered necessary for the payment of compensation.

In accordance with rules which are set out in the Schedule to the Ordinance, payments will be made by the board to Estates with factories, millers and planters for cyclone or drought damage suffered by them in any year. The Ordinance also provides for the making of advances to the Fund from the general revenue of the Colony in case the Fund is temporarily unable to meet its liabilities, and for the inspection of plantations to ensure that they are not neglected after the occurrence of a cyclone or drought.

**Prevention of Yellow Fever.**—There is a danger of yellow fever being introduced into the Colony, as yet free from that disease, by ships or aircraft coming from an infected port. No. 22 accordingly provides for the compulsory inoculation of all classes of persons having to transact business on board ships or aircraft, and prohibits any person from boarding a ship or aircraft coming from an infected port unless he is in possession of a valid certificate of inoculation.

**Prevention of Malaria.**—No. 28 enables measures to be taken for the prevention of malaria and other mosquito-borne diseases which are prevalent in the Colony. It provides for the establishment of an advisory board whose functions will be to advise Government generally on measures to be taken to bring malaria under control and to ensure the co-ordination and the co-operation of Government departments, local authorities, land owners and the public in general.

Executive powers are conferred upon the Director of the Medical and Health Department—who is the ex-officio chairman of the advisory board—regarding the measures to be taken with a view to preventing or combating outbreaks of malaria and other mosquito-borne diseases.

No. 29 is related to the Prevention of Malaria Ordinance, 1946, and is one of the legislative measures designed to combat the existence, persistence and propagation of malaria and other mosquito-borne diseases in the Colony.

Under the Ordinance, riparian owners in special areas are compelled to reconstitute the riparian belts of vegetation growing on their stream banks by clearing them of weeds and other useless vegetation and planting thereon approved species of trees.

**Crown Lands.**—No. 30, which is connected with the two preceding Ordinances, amends and implements the existing laws governing the protection of trees growing on Crown Lands and in mountain and river reserves.

**Apprenticeship.**—No. 13 was introduced with the object of putting an end to the prevalent practice, in the Colony, of excessive apprenticeship. Young people were employed at low wages, with promises for the future; but the number of apprentices being in excess of the actual demand, only the best could eventually find work.

The Ordinance regulates the conditions of apprenticeship, provides for the establishment of apprenticeship committees, for the declaration of designated trades, for the powers of the Labour Commissioner in connection with such trades, and, generally, aims at ensuring that, on the completion of their period of apprenticeship, apprentices shall have reasonable prospects of employment.

**Industrial Arbitration.**—No. 37 introduces certain changes with respect to arbitration procedure in labour disputes. Hitherto the Court of Arbitration consisted of a Judge of the Supreme Court of the Colony, assisted by two assessors, but the procedure to be followed before the Court was not provided for.

The main features introduced by the Ordinance are the following—

(*a*) The President of the Court will be a person appointed by the Governor, not necessarily a Judge of the Supreme Court, and provision is made for the making of the award with all practicable dispatch;

(*b*) Whereas the power to refer an industrial dispute to compulsory arbitration remains, as before, vested in the Governor in Executive Council, the Labour Commissioner is given power to refer a dispute to the Court, if both parties to the dispute consent;

(*c*) No strike or lock-out may lawfully take place in respect of industrial disputes which are under reference to the Court.

The Ordinance also introduces " joint committees," in addition to " conciliation boards " as part of conciliation machinery.

**Factories.**—The object of No. 42 is to provide for the registration and supervision of factories and for the more effective protection of workers against accidents.

Under the Ordinance every existing or new factory must be registered with the Labour Commissioner, who may refuse to issue the certificate of registration, if in his opinion the factory cannot be operated without imminent risk of bodily injury, or has not been erected in accordance with the terms of the permit authorizing its construction, as the case may be. Power is given to the Governor in Executive Council to make regulations for the purpose of ensuring the health and safety of workers employed in factories.

**Emergency Laws.**—No. 4 continues in force for a limited period, viz., until December 31, 1947, certain Defence Regulations which were enacted during the war and which would otherwise have expired on February 24, 1946, date of expiry of the United Kingdom Emergency Powers (Defence) Acts 1939–1945.

The Defence Regulations so continued in force relate to supplies and other matters of a purely local character and were considered to be outside the scope of the Imperial legislation which empowers the Governor by Order to direct that certain Defence Regulations shall be retained.

**Ex-Servicemen's Welfare Fund.**—In May, 1942, a Committee was appointed to render assistance to ex-Servicemen after their demobilization and pending their re-settlement in civil life, and, from time to time, funds were contributed by means of the public and from other sources for the expenses and management of the Committee and the carrying of its objects into effect.

No. 9 was passed with a view to giving a legal status to the Committee and empowering it to hold and possess property and to carry on its activities in its corporate capacity.

**Military Units.**—No. 23 was passed for the purpose of giving legal sanction to the voluntary enlistment of recruits for service in garrison and other units in and outside the Colony. It provides, *inter alia,* for the enlistment of recruits, the establishment of units and their duties and functions, their control by the Army Council and the application to them of the Army Act, the making of regulations relating to their pay and allowances, and the disbandment of units.

**Lotteries.**—At the beginning of the war, an Ordinance was passed, (The Lotteries (His Majesty's Forces) Ordinance, 1939), authorizing the promoting and conduct of lotteries in aid of His Majesty's Forces.

With the end of hostilities, it was necessary that that Ordinance should be repealed and re-enacted in the form of No. 16. It enables Government to raise funds in time of peace for His Majesty's Forces and also provides for the application of part of the proceeds of the lotteries to the welfare, assistance and entertainment of personnel of the Merchant Navies of the United Kingdom, British possessions and Friendly Powers.

**Sweepstakes.**—Lotteries are prohibited in the Colony, but under a few enactments a number of incorporated societies are permitted to promote and conduct lotteries in connection with horse racing and regattas. No. 51 was passed to provide for the control of these sweepstakes. It provides for the limiting of the number of lotteries which may be promoted by any such society in any year and for the filing of a duly audited yearly statement of accounts and balance sheet. Further, the Governor in Executive Council is empowered, in case of dishonesty, to prohibit a society from promoting further lotteries.

**Co-operative Societies.**—Certain amendments are effected by No. 66 to Ordinance No. 51 of 1945 which regulates co-operative societies of all kinds.

Those amendments, *inter alia,* authorize a co-operative society to receive deposits from or for the benefit of minors and to pay interest thereon, to accept as members persons having attained the age of 18 years, add to the powers of liquidators and deal with certain matters consequent upon the liquidation of a society, and provide for appeals from the decision of the Registrar in certain cases and for the submission of questions of law to the Supreme Court by way of case stated.

**Inscription of Privileges and Mortgages.**—No. 73 was passed with the object of reforming and simplifying the existing procedure relating to the enrolment in the Mortgage office of privileges and mortgages. Hitherto the title deed giving rise to the privilege or mortgage was filed with the Conservator of Mortgages, together with two memoranda of inscription setting out certain particulars required by law and the contents of those memoranda were copied *verbatim* in a register of inscriptions. This superfluous formality, entailing loss of time, has been done away with. The register of inscriptions is abolished; under the new procedure

the memoranda of inscription retained in the Mortgage office will be bound together and will replace the suppressed register.

**Inscription and Mortgage.**—No. 74 is akin to Ordinance No. 73 and simplifies in like manner the law and procedure relating to the transcription of deeds and judgments.

**Tobacco Board Employees' Pension Fund.**—No. 76 was passed to provide for the granting of pensions to employees of the Tobacco Board constituted under Ordinance No. 13 of 1943. It makes provision for the formation of a Pension Fund, for contributions thereto, for the keeping and auditing of accounts, for periodical actuarial investigation, and for the conditions under which pension is payable.

### 4. SEYCHELLES

[*Contributed by* J. M. HOMER-VANNIASINKAM, ESQ., *Legal Adviser.*]

FIFTEEN Ordinances were enacted during the year 1946, the most important of which are the following:—

**Military Units.**—No. 1 enables the establishment of military units for service outside the Colony, and is based on the Military Units Ordinance, 1944, which was an *ad hoc* Ordinance dealing with the Seychelles Pioneer Corps.

**Town and Country Planning.**—No. 14 enacts comprehensive legislation regarding the planning and development of both urban and rural areas in the Colony. The powers taken in this Ordinance are similar to those obtaining in the United Kingdom. The responsibility for the preparation and execution of planning schemes is placed on the " planning authorities " and the " responsible authorities " which will be bodies corporate by virtue of the provisions of s. 3. These authorities will be specially created for the purpose.

**Police Force.**—No. 15 repeals the Police Ordinance, 1897, which has been out of date for a considerable time, and enacts a complete set of provisions dealing with the organization, discipline, powers and duties of the Police.

## IX. WEST AFRICA

### 1. GAMBIA

**1945**

**Pensions.**—Five out of the twenty Ordinances passed during the year dealt with the subject of pensions. No. 2 amended and made additions to the principal Ordinance of 1943 dealing with war pensions. A temporary increase of certain pensions granted under the European Officers' Pension Ordinance, 1922, or payable under the Widows' and Orphans' Pension Ordinance, 1913, was made by No. 3, amended by No. 18. Similarly an increase was granted under No. 4, amended by No. 19, to the pensions given under the Public Officers' Pension Ordinance, 1923. Non-pensionable employees were prohibited by No. 20 from becoming contributors to the non-pensionable employees' provident fund after January 1, 1946, and the Ordinance also permitted depositors to withdraw from that fund.

**Labour.**—Arrangements for the training and rehabilitation of ex-Service men are made by No. 5 to be carried out under the direction of an advisory council. A special register is established for them so as to facilitate their employment.

**Medicine.**—The senior Medical Officer is authorized at his discretion to issue to persons not possessing medical qualifications, licences to give injections of drugs, by No. 8.

**Land Tenure.**—The Public Lands Acquisition Ordinance, 1901, and the Lands (Grants and Dispositions) Ordinance, 1902, are repealed by No. 15 which

is a complete consolidation containing the law relating to the tenure and management of lands in the Colony. The lands in the Protectorate are dealt with in the corresponding Ordinance No. 16.

**1946**

[It is hoped to publish the review in the next issue.]

## 2. GOLD COAST

[*Contributed by* ARTHUR LEWEY, ESQ., *Attorney-General.*]

DURING the year 1946 thirty-eight Ordinances were passed, of which the following are the most important:—

**Road Transport.**—No. 1 provides for the establishment of a Transport Licensing Board and for the licensing and control of road transport and matters connected therewith.

**Radio-Active Minerals.**—No. 4 provides for the regulation and control of all prospecting and mining for radio-active minerals and for restricting their export.

**Treasury Bills.**—No. 14 provides for the issue of Treasury Bills in the Gold Coast.

**Coroners.**—No. 19 provides for the appointment, powers and duties of coroners.

**Nurses.**—No. 20 provides for the training and registration of nurses and regulates the practice of nursing.

**Pharmacy and Poisons.**—No. 21 makes better provision for the regulation of the profession of pharmacy and for the control of the trade in drugs and poisons.

**Constitutional Instruments.**—No. 37 provides for various repeals and for the amendment of a number of provisions in the Ordinances of the Gold Coast consequent upon the coming into operation of certain Orders of His Majesty in Council and other Constitutional Instruments relating to the Gold Coast Constitution.

**Emergency Powers.**—In February, 1946, the Emergency "Defence Regulations" would ordinarily have ceased to have effect, owing to the expiry of the Emergency Powers (Defence) Acts, by virtue of which they had been made. It was necessary, therefore, to take steps to preserve certain of the regulations for a further period, in order to sover the period of transition from war to peace. This was effected partly by retaining certain regulations under the authority of the special legislation enacted for that purpose in the United Kingdom, and partly by a number of local Ordinances which will be allowed to expire when their purpose has been achieved.

## 3. NIGERIA

[*Contributed by* LIONEL BRETT, ESQ., *Crown Counsel.*]

FORTY-FIVE Ordinances were passed in the year.

**Local Development.**—A number of Ordinances are designed to put into effect a plan of local development and welfare known as the Ten-Year Plan. The Development Loan Ordinance, No. 3, authorizes the raising of a loan of £8,000,000 in England, to which the provisions of the Colonial Stock Act, 1877, will apply, and in addition, by the Local Loans (Registered Stock and Securities) Ordinance, No. 9, provision is made for the first time for the raising of loans locally. The Nigeria Local Development Board Ordinance, No. 2, empowers the Governor to establish a board of not less than seven members, to be known as the Nigeria Local Development Board. The board is given power to buy and

sell movable or immovable property, but its most important power is that of making grants or loans out of funds placed at its disposal by the Legislative Council, for use by approved authorities or bodies on schemes of development.

The Nigeria Town and Country Planning Ordinance, No. 4, provides for the appointment by the Governor of a Planning Authority for any area, to be charged with the preparation and execution of schemes for controlling the development and use of land, securing proper sanitary conditions, amenity and convenience, and preserving buildings or other objects of architectural, historic or artistic interest and places of natural beauty or interest. In addition to the power of compulsorily acquiring land, a Planning Authority has the power, with the approval of the Governor-in-Council, of requiring a local, native or other authority to levy, or of itself levying, a planning rate.

Two Ordinances make special provision for development in the Cameroons under British Mandate. The Ex-Enemy Lands (Cameroons) Ordinance, No. 38, authorizes the Governor to purchase various lands from the Custodian of Enemy Property. The Cameroons Development Corporation Ordinance, No. 39, provides for the establishment of a Corporation to develop such lands as may be placed under its control; the Corporation may engage in agriculture, stock-raising, manufacture and trade, including both import and export trade, and may operate transport undertakings by land or water. Any surplus profits are to be applied for the benefit of the inhabitants of the Cameroons under British Mandate in such manner as the Governor may determine.

**Landlord and Tenant.**—The Increase of Rent (Restriction) Ordinance, No. 1, follows familiar lines, and embodies in the statute law of Nigeria what had, since 1942, been the subject of regulations under the Emergency Powers Acts.

**Nurses.**—The Registration of Nurses Ordinance, No. 16, establishes a Nursing Council for Nigeria, to be the professional governing body.

**Ex-Servicemen.**—The Nigerian ex-Servicemen's Welfare Association Ordinance, No. 32, as its title implies, provides for the establishment of an association to further the welfare of ex-Servicemen of African descent resident in Nigeria.

**Constitution.**—On January 1, 1947, a new constitution came into force in Nigeria, but as the constitutional instruments were enacted by His Majesty, or His Majesty in Council, a discussion of it would perhaps be out of place in a review of Nigerian legislation of 1946. It will be enough to say here that, unless it is ever necessary for the Governor to use his reserved powers of legislation, Ordinance No. 45 of 1946 will be the last Ordinance to be enacted, and not merely assented to, by the Governor so far as its provisions relate to any part of Nigeria, since under the new constitution the Northern Provinces, as well as the Southern, are represented in the Legislative Council.

### 4. SIERRA LEONE

[It is hoped to publish the review in the next issue.]

## X. EAST AFRICA

### 1. KENYA

[*Contributed by* Hon. H. E. Stacey, *Acting Solicitor-General, Kenya.*]

Fifty-nine Ordinances were passed during the year 1946. A summary of the more important enactments is given below.

**Land and Agricultural Bank.**—No. V reduces the rate of interest payable on advances made out of the funds of the Land Bank to 4½ per cent., such reduction to take effect from January 1, 1946.

**Coffee.**—No. VI provides for a central organization, to be known as the

Coffee Marketing Board, for the marketing of coffee, sets out the duties of this board, prohibits the export or sale of coffee, except by the board, and gives the board the sole right to purchase coffee from coffee planters, to purchase and sell coffee which has been grown in the Colony, the Tanganyika Territory, the Protectorate of Uganda or the Belgian Congo, etc.

**Fatal Accidents.**—No. VII makes it possible for an action at law to be brought, for the benefit of the wife, husband, parent and child of a person who has been killed, against a person who, by his wrongful act, neglect or default, has caused such death.

**Liquor.**—No. XII continues, as permanent legislation, amendments to the Liquor Ordinance, 1934 (No. 62 of 1934), which had been made, during the emergency, by way of Defence Regulations, extending to canteens, clubs, institutes, messes or other similar institutions established for the use of members of the British Merchant Service, the same privileges as are extended to such institutions for members of H.M.'s Armed Forces, and by permitting the sale or supply of beer to any member of the Military Forces of the Crown, for consumption on the premises, in any lawfully established military canteen.

**Mines.**—No. XV reintroduces peace-time procedure whereby a prospecting licence is valid for ten years from the date of pegging; but, in order to avoid inflicting hardship on present licence holders, who, during the war, have been, in the main, unable to implement their licences, the Ordinance enables such licences to be extended up to a maximum period of fifteen years.

**Trading with the Enemy.**—No. XXIII incorporates in the Trading with the Enemy Ordinance, 1939, a number of amendments which, during the emergency, were made by means of Defence Regulations. The amendments follow those which have, from time to time, been made to the United Kingdom Trading with the Enemy Act.

**Local Government.**—No. XXIV creates a Bench of Aldermen as an addition to the constitution of the Nairobi Municipal Council and provides for the qualifications, mode of election, numerical strength, term of office and powers of such aldermen. The Ordinance also provides for the appointment of two native councillors to be selected from among persons resident within the Municipality of Nairobi.

**Employment of Servants.**—No. XXVI enables (a) a ninety-day contract, either oral or written, to be entered into by employers and servants; (*b*) provides that where a servant has been granted leave, the period of such leave shall be excluded from the period of the contract, and (*c*) empowers the Governor-in-Council to make Rules providing for the holding of tests in respect of any trade or occupation and for the granting of a certificate of efficiency to any person who voluntarily enters for, and passes, any such test.

**War Refugees.**—No. XXXIII makes provision for the proper control of War Refugees and for their expulsion from the Colony in the event of their refusal or neglect to leave the Colony after due notice. The refugees were admitted to the Colony without being required to observe any of the formalities prescribed for immigrants by the legislation governing immigration. During the war such concessions were dictated by humanitarian considerations and by military necessity and were granted, to a limited extent, in order to assist neighbouring territories. It has, however, always been an expressly implied condition of the arrangement that such persons should not be permitted to remain in the Colony indefinitely, and that they should leave when opportunities occur for their removal to other suitable places. The Ordinance is designed to deal with such persons as will not voluntarily co-operate in the arrangements for their departure from the Colony.

**Customs Duties.**—No. XXXIV enables the Governor-in-Council, if it appears to him to be necessary in the interests of the community, by notice published in the *Gazette*, to provide that Customs duties shall not be charged, levied or

collected on such foodstuffs as are specified in such notice. The object of the measure is to encourage the importation of any foodstuff from outside sources when a shortage exists in the Colony. The main articles concerned are rice, millets, cassava and cassava flour, ghee, cocoanut oil and dates.

**Passion Fruit.**—No. XXXVI establishes control of the sale of passion fruit locally as well as for export, and creates machinery for the licensing of growers of passion fruit. Under the principal Ordinance (No. 11 of 1937) the sole right of purchasing passion fruit for the purpose of exporting it from the Colony is vested in the agency appointed by the Passion Fruit Board under the provisions of s. 3.

**Hindu Marriage, Divorce and Succession.**—No. XLIII regularizes the position regarding the marriage, divorce and law relation to succession, of Hindus, and enables decrees for restitution of conjugal rights and orders for separation, maintenance and custody of children to be made. The measure, with the exception of ss. 4, 5 and 6 closely follows the Tanganyika Asiatics (Marriage, Divorce and Succession) Ordinance (c. 93).

**War Taxation.**—No. XLIV repeals the original Ordinance (No. 25 of 1943) which imposed a sugar consumption tax of one cent per pound on every pound of sugar consumed in the Colony.

**Game.**—No. XLV increases the fees payable for a special licence to shoot an elephant to £50 for the first elephant and £100 for the second elephant (instead of £25 and £50 respectively heretofore). This measure was necessitated by the large number of licences issued during recent years, the rise in the price of ivory, the large number of elephants wounded and lost, and the fear of extinction of the large bull elephants in the Colony.

**Hospital Services.**—No. XLVII gives effect to the recommendations contained in the Majority Report of the Hospital Committee dated August 2, 1944, which was accepted by the Government and approved of by a Select Committee of the Legislative Council of the Colony. The terms of reference of this Committee were: (*a*) to consider and report by what means the cost to individual patients of treatment in Government European hospitals can be reduced and how far such proposals can or should be made to apply to treatment at non-Government hospitals and nursing homes; and (*b*) to consider and report by what means the cost of maternity services to Europeans could be reduced.

**European Civil Service Contributory Pensions.**—No. XLVIII provides for the establishment, management and control of a Contributory Pensions Fund for the Kenya European Civil Service.

**King's African Rifles.**—No. XLIX abolishes corporal punishment for soldiers and followers of the King's African Rifles.

**Workmen's Compensation.**—No. LIV provides for the payment of compensation to a workman or his dependents in the event of his being injured or killed by an accident arising out of, and in the course of, his employment. For some time past, in accordance with a procedure arranged by the Labour Commissioner, both the Government and the great majority of private employers in Kenya had been paying compensation to injured workmen on the basis provided for in this Ordinance, and its enactment has, therefore, made legal provision for something which had up to then depended upon the goodwill of employers. Similar legislation, protecting the position of workmen employed in the mining industry, has been in existence in Kenya for a considerable period.

**Minimum Wage.**—No. LV enables the Governor-in-Council, by order published in the *Gazette*, to fix minimum rates of wages for any occupation in the Colony either generally or in any specified area if he is satisfied that the wages being paid to any persons employed in any occupation are unreasonably low. The measure also repeals the Minimum Wage Ordinance, 1932 (No. 22 of 1932), which enabled such action to be taken but did not contain the machinery necessary for the

proper enforcement of such orders. Except for verbal amendments the measure follows the Cyprus Minimum Wage Law, 1941 (Law No. 17 of 1941).

**Petroleum.**—No. LVI makes provision for restricting and regulating the import, transport and storage of petroleum. Heretofore the storage and transport of petroleum was controlled in Kenya by the Indian Petroleum Act, 1899, which is no longer in force in India, and by rules made under that Act, and in many cases such rules did not conform to modern practice. This Ordinance introduces a measure of control more consistent with modern practice and requirements, by conferring upon the Governor-in-Council power to make the necessary rules. It closely follows the Tanganyika Petroleum Ordinance, 1941 (No. 32 of 1941).

## 2. NYASALAND

[*Contributed by* E. J. E. Law, Esq.]

The year 1946 was one of unusual legislative activity, the record number of fifty Ordinances being enacted. Many of these were of major importance, in particular—

**Central African Air Services.**—The object of No. 3 is to establish conjointly with Northern and Southern Rhodesia a civil air authority and an air corporation.

**Children and Young Persons.**—No. 5 is based on the corresponding United Kingdom legislation.

**Natural Resources.**—No. 9 imposes on owners and occupiers of land the duty to conserve natural resources, and sets up a body, the Natural Resources Board, with extensive powers to enforce the carrying out of essential soil conservation schemes.

**Tobacco and Tung.**—Nos. 10 and 11 deal respectively with the production, marketing and control of these important local products.

**Statute Law Revision.**—No. 19 provides for a revision of the laws to be undertaken during 1946. The last revision took place in 1933.

**Co-operative Societies.**—No. 20 makes provision for the establishment and registration of co-operative societies.

**Affiliation.**—No. 25 provides for the maintenance of illegitimate children.

**Police.**—No. 26 consolidates the law respecting the police force.

**Evidence.**—Authentication of Documents Ordinance, No. 27, lays down the conditions under which documents executed abroad shall be authenticated for use in the Protectorate.

**Medical Practitioners and Dentists Registration.**—No. 28 consolidates and modernizes the existing law relating to doctors and dentists.

**Archives.**—Another example of international legislation is No. 29, which establishes jointly with the Rhodesias a Central African Archives Commission an arrangement to make provision for the preservation of public documents.

**Hotels.**—No. 32 provides for the licensing of hotels and their inspection and control, and establishes an Hotel Board entrusted with the administration of the Ordinance.

**Maize Control.**—No. 34 sets up a body known as the Maize Control Board to supervise the purchase and sale of the Protectorate's most important food-crop.

**Plants Protection.**—No. 36 consolidates the law dealing with the importation of plants and the control of plant pests and diseases.

**Civil Procedure.**—No. 37 puts the Government on the same footing as private individuals so far as liability both in contract or tort is concerned, and prescribes the procedure to be followed when Government is a party to any civil litigation.

**Midwives.**—No. 38 provides for the training and control of midwives.

**Promissory Oaths.**—No. 39 provides for the taking of prescribed oaths by certain public officers.

**Rhodesia and Nyasaland Court of Appeal.**—No. 40 marks the severance of Nyasaland from its forty year old association with the East African Court of Appeal and its adherence to the former Rhodesian Court of Appeal, a step rendered necessary for reasons of geography, economy and general convenience.

**Boy Scouts' Association.**—No. 44 is designed to further and protect the activities of the boy scout and girl guide organizations in the Protectorate.

In addition 195 Government Notices containing subsidiary legislation such as rules, regulations, proclamations and orders, were published during the year. Of these a considerable proportion deal with price control, imports and exports control, and kindred matters.

## 3. SOMALILAND PROTECTORATE

[*Contributed by the* LEGAL SECRETARY.]

EIGHTEEN Ordinances were enacted in 1946.

**The Preservation of Objects of Archæological and Palæontological Interest.**—No. 1 is intended to prevent unskilled exploration for and excavation of objects of archæological and palæontological interest which may exist in the Protectorate; provides that exploration and excavation may not be undertaken without a permit from the Governor and that any object discovered may not be removed from the Protectorate without similar permission and provides, further, for the acquisition by the Government of rights of guardianship over such objects and for their preservation.

**Electricity.**—No. 6 is meant to facilitate and regulate the generation, transmission, transformation, distribution, supply and use of electric energy for lighting and other purposes.

**Radio-Active Minerals.**—No. 13 prescribes special conditions governing the issue of prospecting licences and export permits in respect of radio-active minerals.

**Refund of Import Duty.**—No. 17 provides for the refund of import duty from Customs revenue in respect of goods purchased as stores from open stocks for the use of His Majesty's Forces.

## 4. TANGANYIKA TERRITORY

[*Contributed by* E. J. HAUGHEY, ESQ., M.A., LL.M.(N.Z.), *Crown Counsel.*]

### 1945

TWENTY-FIVE Ordinances were passed during the year 1945, thirteen being of an amending nature. The following are the principal enactments which call for comment.

**Copra Control.**—Under No. 1 powers are taken to control the harvesting of coconuts, the methods of drying for the production of copra and the dealing in copra by way of purchase, sale, milling and exportation. This system of control has been set up with a view to an improvement in the quality of the copra produced in and exported from the Territory.

**Poor Prisoners Defence.**—No. 4 is designed to make provision for the issue by the appropriate authority of a certificate of legal aid, where the circumstances justify such a course, in any case tried by the High Court or by a Magistrate exercising extended jurisdiction. Previously the practice has been for legal aid to be provided at the expense of Government only for poor prisoners who are tried on a capital charge.

**Criminal Procedure.**—No. 5 is in the main a consolidation and re-enactment of the existing law relating to Criminal Procedure, but the opportunity has been taken to incorporate various minor amendments which experience has shown to be desirable.

**War Marriages.**—No. 10, the provisions of which are analogous to those of the Matrimonial Causes (War Marriages) Act, 1944, confers jurisdiction upon the High Court of the Territory in proceedings for divorce or nullity of marriage in certain cases where the husband was, at the time of the marriage, domiciled outside of the Territory but the wife was, immediately before the marriage, domiciled in the Territory.

**Hotels.**—No. 11 is designed to set up a system of control for enforcing reasonable standards of cleanliness, sanitation and efficient service in hotels throughout the Territory.

**Life Assurance.**—No. 14 provides for the control of the business of Life Assurance in the Territory. The principal features of this Ordinance are: (1) the business of life assurance is confined to incorporated bodies of sound financial status; (2) the terms of policies issued must be substantially in accord with an approved standard form; and (3) power is reserved to control the transaction of such business with natives in prescribed areas.

**Sisal Industry.**—No. 15 is in replacement of the previous Ordinance on this subject, viz. No. 22 of 1938. However, under the new Ordinance the existing Sisal Board is reconstituted and its functions enlarged and there is provision that any rules made for the purpose of regulating and controlling the cultivation, treatment, keeping, storage, marketing or export of sisal shall first receive the approval of those members of the Tanganyika Sisal Growers' Association who during the previous year have produced not less than two-thirds of the total Tanganyika crop during that period.

**Motor Vehicles Insurance.**—No. 18 provides for a system of compulsory insurance of motor vehicles against third-party risks. Pursuant to s. 2 thereof this Ordinance was brought into operation on November 1, 1946, by Government Notice No. 222 of 1946.

**Penal Code.**—No. 21 brought into operation on September 28, 1945, the Penal Code, 1945, which is a consolidation and re-enactment of the substantive Criminal law in force in the Territory.

**Excess Profits Tax.**—No. 22 is designed to provide (*inter alia*) that this tax shall cease after the chargeable accounting period ending on December 31, 1945.

**Shop Hours.**—No. 25 is a re-enactment of the Shop Assistant Employment Ordinance, 1932 (No. 33 of 1932), with additional provisions and modifications designed to give effect to certain decisions reached by a Select Committee appointed to report on the subject.

**1946**

Of the 31 Ordinances enacted during the year 1946, no fewer than 22 were in amendment of existing legislation. The following comments are set out in respect of the most important of these Ordinances.

**Control and Expulsion of War Refugees.**—During the earlier stages of the war a large number of persons of various nationalities, who were evacuated from the combat areas of Europe, were received into the Territory, and the necessary means of control over them was effected by means of regulations enacted under powers conferred under the Emergency Powers legislation. On the expiry of this legislation it has become necessary by means of No. 3 to preserve the provisions contained in these regulations so that proper control might continue to be exercised over those refugees whom it is not at present practicable to repatriate to Europe.

For humanitarian considerations and for reasons of military necessity these refugees were admitted into the Territory without being required to observe any of the formalities prescribed by the Immigration Laws, but it was an express or implied condition of this arrangement that they should not be permitted to remain in the Territory as approved immigrants after the emergency which occasioned their informal reception had ceased and opportunity had occurred for their

removal to other suitable localities. As there have been cases where such an opportunity has occurred but the refugees concerned have been very reluctant to leave the Territory. No. 3 also contains provision for the compulsory removal of those refugees who persist in an unco-operative attitude after due notice has been given to them of the arrangements made for their departure.

**Recruitment of Native Servants.**—No. 6 (The Master and Native Servants (Recruitment) Ordinance) is designed to give effect to the Recruiting of Indigenous Workers Convention, 1936, by which the Territory is bound.

**Employment of Women and Young Persons.**—The purpose of No. 10 which amends the principal Ordinance (No. 5 of 1940) dealing with this matter is to implement the recommendations of the International Labour Conference held at Philadelphia during 1944 which are specified in Articles 19 and 21 thereof.

**Provocation in Cases of Homicide.**—No. 16 amends s. 202 of the Penal Code, 1945, which defines the nature of the provocation which has to be present before an unlawful killing which would otherwise be murder can be reduced to manslaughter.

**Yellow Fever Control.**—The amendment of the principal Ordinance (No. 15 of 1942) effected by No. 18 is designed to implement the recommendations of an Interdepartmental Committee set up to deal with the subject of Yellow Fever Control.

**Abolition of Corporal Punishment for Military Offences.**—No. 21, which is an amendment of the King's African Rifles Ordinance, 1931 (No. 42 of 1931) eliminates the provisions therein which enable corporal punishment to be inflicted for military offences. This amendment brings the principal Ordinance into line with the Army Act in this respect.

**Protection of Diamond Industry.**—The main purpose of the amendments to the Diamond Industry Protection Ordinance (Cap. 103 of the Laws) effected by No. 27 is to strengthen the existing powers for the prevention and detection of and the punishment for the theft of rough and uncut diamonds which is becoming an increasing mischief in the areas where mining for diamonds is carried on in the Territory.

**Municipalities.**—The purpose of No. 29 is to provide for the establishment of municipalities in place of townships in localities which are considered sufficiently advanced with regard to population and commercial importance to justify transference from the Central Government to the local authorities of an increased measure of administrative, legislative and financial control.

**Export Tax.**—No. 31 provides for the continuation of the Export taxes at present in existence under No. 26 of 1940, which is repealed, and for the extension, variation or abolition of such taxes by order of the Governor with the consent of the Legislative Council.

## 5. UGANDA PROTECTORATE

[*Contributed by* J. R. GREGG, ESQ., *Attorney-General.*]

DURING the year 1946, thirty-five Ordinances were passed, of which twenty-three were amending Ordinances. The following are the more important enactments:—

**Police.**—No. 1 gives power to the Commissioner of Police, subject to the directions of the Governor, to regulate and control all traffic in a disturbed area, call in all firearms, prohibit the carrying of weapons, impose a curfew and take possession of property. Little variation has been made in the powers at present held by Provincial Commissioners to apportion the cost of disturbances amongst the inhabitants of a disturbed area. It also creates the ranks of Assistant Commissioner, Chief Inspector and Probationer Constable which were not provided for in the principal Ordinance.

**Emergency Powers.**—Amendment of Laws (Defence) Ordinance (No. 3)

provides that certain Regulations made under the Emergency Powers (Defence) Act, 1939, which amended the statutory Law of the Protectorate should become part of such statutory Law. This method for giving permanent effect to amendments of Ordinances made by Defence Regulations was based on the method adopted in s. 15 of the Emergency Laws (Transitional Provisions) Act, 1946.

**Co-operative Societies.**—No. 5 provides comprehensive legislation suitable for regulating Co-operative Societies of all kinds. Different types of societies will need different degrees of help and guidance. It was, therefore, considered necessary to provide for the full measure of control which any society, especially in its infancy, may need and to give the Governor the power to exempt from the operation of certain sections of this Ordinance societies or classes of societies for which such intensive supervision would not be appropriate.

**Pharmacy and Poisons.**—No. 8 replaces the Drugs and Poisons Ordinance (Cap. 59, Revised Edition, 1935) and brings legislation on this subject into line with similar legislation in other parts of the Empire.

**Hotels.**—No. 20 provides for control over hotels for the purpose of securing reasonable standards of cleanliness, sanitation and service. The control is exercised by a board appointed by the Governor. Hotels are required to be licensed; and licences are granted only to applicants who satisfy the board as to their fitness to manage an hotel and as to the suitability of the hotel premises. The board may cancel licences in certain eventualities. Provision is made for a fair hearing in all matters involving a decision of the board and for an appeal to the Governor-in-Council from all decisions of the board. The Ordinance does not apply to hotels which cater for natives only.

**Affiliation.**—No. 12 provides machinery under which the father of an illegitimate child may be required by an order of the Court to contribute to its support. It does not apply to cases in which both the mother and the father of the child are natives.

**Employment.**—No. 13 replaces the existing Masters and Servants Ordinance (Cap. 106) with an Ordinance more in keeping with modern conditions. It endeavours to implement many of the recommendations made by the 1938 Commission of Enquiry into the Uganda Labour situation and contains sections taken from Kenya, Tanganyika and Nyasaland legislation. Sections relating to the care of employees, contracts of service and the discretionary powers of magistrates are based on local law. The Ordinance, when it is brought into operation, will apply to all employees, irrespective of race, who do not receive more than a prescribed maximum monthly wage which will be fixed by the Governor under s. 4 by notice in the *Gazette*.

**Workmen's Compensation.**—No. 14 introduces legislation which provides for compensation to be paid to a workman or his dependants in the event of his being injured or killed by an accident in the course of his employment. The Mining Ordinance (Cap. 110, Revised Edition, 1935) provided such a scheme of compensation for persons employed in prospecting or mining operations and now all workmen, as defined in the Ordinance, have a similar right to compensation. The Ordinance adopts, with certain modifications, the statute law obtaining in England, save that no provision is made for industrial disease.

**Cotton Seed Export Duty.**—It was considered desirable in the interests of the public revenue that cotton seed exported from the Protectorate should be subject to an export duty. Ginned cotton has been subject to such a duty for many years. No. 23 authorizes the imposition of the duty.

**Companies.**—No. 24 was enacted with the main object of preventing the formation and operation of bogus companies. It is partly based on recommendations made by the Registrar of Companies and to a great extent on recommendations contained in the Report of Mr. Justice Cohen on English Company Law amendment, published in June, 1945. Six out of the seven amending sections of this Ordinance owe their origin to this Report.

**Employment of Children.**—No. 27 gives legislative effect to recommendations contained in articles 17 to 28 of the International Labour Conference Recommendation No. 70 of 1944.

**Tea Cess.**—No. 34 makes provision for the imposition of a cess on all made tea manufactured in the Protectorate by s. 14 of the Tea (Control) Ordinance, 1940. That Ordinance expires on February 24, 1947. This Ordinance provides for the continuance of power to impose the cess. The objects for which the proceeds of the cess may be used are set out in s. 8.

## 6. ZANZIBAR

[*Contributed by* A. McKisack, Esq.]

During the year 21 Decrees were passed, of which the following were the more important:—

**Customs Tariff.**—No. 18 abolished war-time surcharges but imposed a Development Duty on certain commodities to raise additional revenue for the Protectorate's post-war development scheme.

**Juvenile Offenders.**—Nos. 6 and 14 made extensive amendments to the law on this subject with a view to bringing it more into line with modern methods in England.

**Labour.**—No. 11 replaced the former Master and Native Servants Decree so as to provide a modern code for regulating and defining the obligations of employer and employed of all races in conformity with the circumstances of the Protectorate and the requirements of international labour conventions.

**Legislative Council.**—No. 4 enabled an additional unofficial member to be appointed to represent African interests in the Legislative Council.

**Public Loan.**—Nos. 1 and 2 were enacted to prepare the way for a loan to be raised if required for purposes of the Zanzibar programme of post-war social and economic development.

**Wakf Validation.**—No. 5 was designed to be declaratory of certain incidents of the Mohammedan law of wakf (defined in the Decree as " the permanent dedication by any person professing the Mohammedan Faith of any property for any purpose recognized by Mohammedan law as religious, pious or charitable "), in order to remove doubts arising out of recent judicial decisions.

## 7. SUDAN

[It is hoped to publish the review in the next issue.]

# XI. SOUTH ATLANTIC

## 1. BRITISH GUIANA

[*Contributed by* A. C. Brazao, Esq., *Legal Draftsman.*]

Thirty-two Ordinances were enacted during the year. The more important of these were the following:—

**Census.**—No. 1 provides for the taking of a comprehensive census not oftener than every five years. Previous to this whenever a census was required to be taken an *ad hoc* Ordinance was passed. The last such Ordinance was in 1930.

**Tax.**—No. 3 permits of the sale of medicated wines in a drug store without a malt liquor and wine licence. By virtue of this Ordinance also licences to trade in gold may now be issued in respect of premises situate in any part of the Colony. No. 13 provides for exemption in certain circumstances from payment of licence duty in respect of any business concerned solely with insurance of

passengers against death or personal injuries while being carried by aircraft within or from or to the Colony.

**Bakeries.**—No. 4 regulates working hours in bakeries. The Ordinance also contains provisions for payment at overtime rates for work on public holidays and at nights.

**Rice.**—Two important Ordinances affecting the rice industry are the Rice Marketing Ordinance No. 5, and the Rice Producers Association Ordinance, No. 7. By the former a board appointed by the Governor is vested with the power to control the manufacture, purchase, sale, distribution and export of all rice manufactured in the Colony. A number of seats on this board are reserved for rice producers. By the latter Ordinance, the Governor is empowered to declare the rice producers of the Colony a body corporate by the name of the British Guiana Rice Producers Association, whose functions include the protection, promotion and advancement of the interests of rice producers generally.

**Quarantine.**—No. 23 carries into effect the International Sanitary Convention, 1926, as amended by the International Sanitary Convention, 1944, and the International Sanitary Convention for Aerial Navigation, 1933, as amended by the International Sanitary Convention for Aerial Navigation, 1944.

**Housing.**—No. 24 makes general provision with respect to the housing of persons of the working class. For the purposes of the Ordinance a Central Housing and Planning Authority is to be constituted, and the Slum Clearance Committee, a special Committee of the Authority, is to be charged with the duty of providing a speedy remedy for insanitary conditions in slum areas and for overcrowding in dwelling-houses.

**Town and Country Planning.**—No. 25 supplements No. 24 by making provision for the orderly and progressive development of areas whether urban or rural and for the preservation and improvement of the amenities thereof.

**Transport and Harbours.**—No. 26 amends No. 30 of 1931, with the object of improving the efficiency of the Transport and Harbours Department. It imposes on the General Manager the direct responsibility for the running of the Department, subject to the special or general directions of the Governor. The former Transport and Harbours Board of Commissioners is replaced by an Advisory Council to the General Manager.

## 2. BRITISH HONDURAS

### 1945

TWENTY Ordinances were passed during the year, of which the majority contained only minor amendments.

**Separation Orders.**—By an amendment of c. 101, No. 2 provides that an order may be made for the benefit of a married woman, notwithstanding that the cruelty or neglect complained of has not caused her to leave and live separately from her husband. If either spouse has been guilty of persistent cruelty to the children, that is a good cause for separation.

**Shops.**—Ordinance 18 of 1943 is strengthened by No. 15 so as to give further protection to shop assistants, especially in respect to their hours of work.

**Forests.**—The conservation of private forests is the object of No. 18 in which the definition of " tree " is limited to mahogany tree.

**Time.**—Regulating the time is said to be the purpose of No. 19, though more properly the Ordinance is to be cited as the definition of time. Its purpose is to define the standard time as being " the mean time of longitude 90 degrees west, which is seven minutes, seventeen seconds, and twenty-seven hundredths of a second later than the mean time at Belize and six hours later than Greenwich Mean Time.

### 1946

[It is hoped to publish the review in the next issue.]

### 3. FALKLAND ISLANDS

THE six Ordinances of the year include two making provision for finance and four amending Ordinances.

**Licensing.**—An amending Ordinance prohibits the supply of alcohol to specified persons and authorizes the Court to prohibit it for named period (formerly one year).

**Pensions.**—No. 2 enables regulations to be retrospective for the benefit of pensioners but only with the sanction of the Governor in Executive Council and the approval of the Legislative Council.

**Customs.**—By an amendment of Customs Ordinance, 1943, No. 3 defines Proof Spirit and enables the Governor to make interim orders referring to duties.

**Tariff.**—By an amendment of Tariff Ordinance, 1943, No. 5 exempts dutiable articles for the use of the Governor from duty.

The six Proclamations include No. 2 repealing Proclamation No. 3 of 1944, which prohibited importation of stock from South America except Southern Argentina and Southern Chile.

No. 5 repealing four emergency Proclamations and No. 6 which repeals No. 5 of 1941 and authorizes open general import licences to Registered Traders within sterling area except respecting foodstuffs. It also limits Import Licences for non-sterling areas.

## XII. WEST INDIES

### 1. THE BAHAMAS

[*Contributed by* J. S. R. COLE, ESQ., *Attorney-General.*]

THIRTY-FOUR Acts were passed during the year 1946.

**Labour Board.**—No. 1 provides for the appointment of a Labour Board and enables the board to intervene in any "labour dispute." It provides also for the appointment of a labour officer to investigate any representation whether of employers or workmen made to him concerning any business, trade, occupation or employment and to report thereon to the board.

**Loans.**—No. 8 provides for the raising of a loan not exceeding £33,000 in order to defray the expenses of the reconstruction of the electrical system in New Providence. No. 30 increases the amount which may be raised under the Electricity Loan Act 1946 from £33,000 to £53,000.

No. 9 empowers the Government to raise a loan not exceeding £10,000 for the purpose of reconstructing the telephone system in New Providence.

**Elections.**—No. 19 repeals and replaces previous legislation on this subject and provides that at every Election in the Colony voting shall be by ballot. The Act makes no changes in the qualifications of voters but provides that a candidate for election to the House of Assembly shall deposit £100 instead of £50 as formerly. A candidate who so desires may withdraw his name at any time but in such case his deposit is forfeit.

**Lunacy.**—No. 21 attempts to bring the provisions relating to persons of unsound mind into line with modern ideas. It distinguishes between voluntary and other patients and includes provision for temporary patients.

### 2. BARBADOS

#### 1945

TWENTY-NINE Acts were passed in the year.

**Prison.**—A person under the age of 21 who has been sentenced to imprisonment for a term not exceeding three months or who has been committed to prison

for non-payment of any sum not exceeding £5, may in the discretion of the Governor of Glendairy Prison and with his own consent, in lieu of imprisonment be employed on public work outside the prison by authority of No. 1.

**Customs.**—The baggage, personal and household effects of the Canadian Government Trade Commissioner and the Assistant are exempt from customs duty by No. 3.

**Probation of Offenders.**—The object of No. 4 is to introduce a system of probation of offenders on the lines familiar in the United Kingdom.

**Tobacco.**—Exportation of locally manufactured cigarettes is prohibited except under licence by No. 8.

**Highways.**—A Department is established by No. 12 to take over the highways from the parishes and is given authority comprehensively to deal with all matters affecting their maintenance. Upon the Act coming into operation the Central Road Board constituted under the Highways Act, 1900, ceases to operate as all its duties are taken over by the new Authority, as are also those of the Transport Board.

**Death Duties.**—Death duties in case of persons killed in the war are remitted by No. 24.

**Shop Hours.**—A consolidation of the law relating to the weekly half-holiday and the seats for shop assistants is contained in No. 27, which also makes provision generally in relation to the closing of shops.

**1946**

[It is hoped to publish the review in the next issue.]

## 3. JAMAICA

**1945**

FORTY Acts were passed during the year and included nine of a local and personal character.

**Cocoa.**—The promotion of the efficiency and interests of the coconut industry was the object of No. 8. It controls the industry so as to regulate the purchase, sale, and export of coconuts and also the processing, manufacture, purchase, sale, distribution and exportation of coconut products. Minor amendments in the law were made by No. 19.

**Hire Purchase.**—The previous law on the subject of hire-purchase agreements is repealed by No. 21 and with amendments is incorporated in it.

**Sex Disqualification.**—By an amendment of Sex Disqualification (Removal) Law, 1944, contained in No. 23, a woman may be exempted from service on a jury by reason of the nature of the evidence to be given or of the issues to be tried.

**Prisons.**—No. 26 is a consolidating measure to simplify and amend the law in relation to prisons and lock-ups. It deals with the discipline and control of prisoners and contains provisions for preventive detention.

**Legislative Council.**—No. 30 is an important constitutional measure declaring and defining the powers, privileges and immunities of the Legislative Council and of the House of Representatives and of their members. It deals with freedom of speech in those bodies and also regulates admission to the precincts of their meeting places. A protection is also given to the persons employed in the publication of the reports and other papers of both bodies.

**Immigration.**—A consolidating measure, No. 33, now contains the law imposing restrictions on immigration by British subjects. No. 34 is a corresponding measure dealing with the landing of aliens and providing for the supervision and deportation when necessary.

**Smallholdings.**—The purpose of No. 35 is to encourage the practice of good

husbandry in relation to smallholdings, by which is meant the adoption of methods which do not affect adversely neighbouring holdings or the capital value of the smallholding and which are generally recognized as applying to holdings of the same character and in the same neighbourhood.

**Sales Tax.**—A Sales Tax on special grade rum is imposed by No. 38.

**1946**

Of the twenty-seven laws passed in 1946, only two were local and personal in character. The remainder were mainly minor amendments.

**Banana Insurance.**—The object of No. 9 was to make provision for the statutory insurance of banana cultivations against damage occasioned by windstorm. It constituted a Banana Insurance Fund to enable growers to effect insurance against such damage.

**Census.**—By No. 16 the previous laws relating to the taking of the census are repealed and the duties of the Central Bureau of Statistics are set forth, so that they include not only the actual census but also the collection, compilation, analysis and publication of statistical information relative to the commercial, industrial, social, economic and general activities and condition of the people.

**Metal Dealers.**—The law relating to the sale and barter of metals is now contained in No. 19 which also includes second-hand jewellery.

**Bank Holiday.**—November 20 is added by No. 20 to the public general holidays as Constitution Day.

## 4. LEEWARD ISLANDS

**1945**

**Medical Profession.**—Of the eleven Acts passed during the year the first dealt with the medical profession by amending the Medical Act, 1937. It provides that in disciplinary inquiries by the Medical Board, the Governor may appoint a judicial assessor and where necessary retain counsel to assist the board. The Act also adds a definition of dentistry.

**Intestate Estates.**—The distribution of the estates of intestates is the subject of No. 4.

**Immigration.**—The previous Acts on the subject of the admission of aliens are now consolidated by No. 7, which contains the whole law imposing restrictions on immigration and the control of the issue and production of passports.

**1946**

The eight Acts of the session include two dealing with Finance.

**Medical Profession.**—By an amendment of the Medical Act, 1937, the Governor in Council is authorized, while a state of emergency renders it necessary, to allow the registration of foreign medical practitioners, who can provide "a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of medicine, surgery and midwifery."

**Trademarks.**—The Trademarks Act of 1930 is repealed by No. 4 which now contains the particulars for the registration of United Kingdom trademarks.

**Police.**—By an amendment of the Police Act, c. 84, the police may now take measurements, photos and fingerprints of all persons who may from time to time be in custody on a charge of felony or indictable misdemeanour.

### (i) Antigua

**1945**

**Survey.**—The second of the eight Acts passed during the year authorizes a survey of the lands and waters of the Presidency.

**Village Councils.**—Provision is made by No. 4 for the establishment of village councils to administer the villages.

**Water Supply.**—The previous Ordinances dealing with the water supply and dating from 1895 are now consolidated in No. 6, which covers the subject by providing for the control and maintenance of watercourses and the construction, control and maintenance of all water works in the Island.

**Income Tax.**—No. 7, the longest Ordinance of the session, is devoted to the subject of income tax, and repeals eight Ordinances on the subject dating from 1924.

**1946**

**Census.**—The first Ordinance of the eleven passed in the session provides for the taking of a census.

**Road Traffic.**—The longest Ordinance of the session is No. 5, which is a complete consolidation of the law regulating traffic on roads and the licensing and taxation of vehicles. It repeals fifteen Ordinances dealing with different branches of the subject.

**Land Settlement.**—By No. 7 a Land Settlement and Development Board is established for the Presidency, which, in addition to dealing with lands, authorizes the board to " erect, maintain and repair buildings."

### (iii) Montserrat

**1945**

**Survey.**—Of the seven Ordinances No. 5 authorizes a survey, similar to that in Antigua.

**Income Tax.**—The law relating to income tax previously to be found in five Ordinances is now consolidated in No. 7.

**1946**

**Census.**—The first of the six Ordinances passed in the year authorizes the taking of a census.

**Forests.**—The three previous Forestry Ordinances are now repealed and consolidated in No. 2, which makes provision for the protection and management of forests.

### (iv) St. Christopher and Nevis

**1945**

**Rent Restriction.**—Housing conditions required the first of the ten Ordinances passed in the year to deal with rent restriction.

**Survey.**—No. 2 provided for a survey of the Presidency.

**Pounds.**—Provision is made by No. 7 for impounding animals.

**Income Tax.**—As in the other Presidencies, income tax receives attention in a consolidating Ordinance which repeals and amends eleven previous Ordinances.

**1946**

**Census.**—The first of the seven Ordinances of the year provides for the taking of a census.

**Port Dues.**—The object of No. 5 is to provide for a payment and collection of port dues.

### (v) Virgin Islands

**1945**

**Survey.**—Of the three Ordinances, two deal with finance and the third authorizes the making of a survey.

**1946**

**Income Tax.**—Income tax occupies the principal place in the legislation of the year and the law is now contained in No. 2.

**Census.**—The taking of a census is authorized by No. 3.

The other three Ordinances deal with finance.

## 5. WINDWARD ISLANDS

### (i) Grenada

[*Contributed by* The Hon. A. R. Cools-Lartigue, *Attorney-General.*]

Sixteen Ordinances were enacted during the year 1946, the most important of which are—

**Slum Clearance and Housing.**—No. 2 makes provisions with respect to the housing of persons of the working classes, the acquisition, reconstruction and management of slum clearance areas and re-development areas, the improvement of unhealthy areas, the repair or demolition of insanitary dwellings, and for purposes connected with the matters aforesaid.

**Town and Country Planning.**—No. 3 makes provision for the orderly and progressive development of land, towns and other areas whether urban or rural, to preserve and improve the amenities thereof, and for matters connected therewith.

**Nutmeg Industry.**—No. 8 creates a body corporate to safeguard and promote the interests of the nutmeg industry and in particular to market nutmegs and to regulate and control the export thereof.

**School Teachers' Pensions.**—No. 12 provides for the payment of pensions to Teachers in Government and Assisted Primary Schools.

### (ii) St. Lucia

**1945**

Fifteen Ordinances received assent during the year.

**Clubs.**—The registration of proprietary clubs was the subject of No. 1.

**Agricultural Produce.**—The whole of the law relating to the sale of agricultural produce is now contained in No. 4, which repeals the previous legislation on the subject.

**Natural Resources.**—The conservation of the forest, soil and water resources of the Colony is the object of No. 6.

**Crown Lands.**—The law relating to the survey and disposal of Crown Lands is consolidated in No. 7.

**Education.**—Scholarships are established by No. 9 in order to assist higher education. There may be six tenable in any University or College in Europe, the British Empire or the United States, or in any agricultural, scientific or technical college or institutions similarly situated and approved by the Governor.

**Town and Country Planning.**—Comprehensive provisions are contained in No. 10 for the orderly and progressive development of land, towns and other areas, whether urban or rural to preserve and improve the amenities.

**Housing.**—No. 11 is an Ordinance complementary to its predecessor to make provision " with respect to the housing of persons of the working classes, the acquisition, reconstruction and management of slum clearance areas and redevelopment areas, the improvement of unhealthy areas and the repair or demolition of insanitary dwellings.

**Land Acquisition.**—The programme set forth in the two previous Ordinances is supplemented by Ordinance No. 12 authorizing the acquisition of land for public purposes.

**Quarantine.**—The law on the subject of quarantine is now contained in No. 13, which repeals previous legislation.

**Pensions.**—Another consolidating Ordinance is No. 14, which deals with the pensions, gratuities and other allowances to be granted to civil servants in the Colony.

**1946**

**Census.**—Of the twenty-one Ordinances which received the Royal Assent, the first made provision for the taking of a census.

**Law Library.**—No. 9 provides for the establishment and maintenance of a law library under the direction of a committee of which the Chief Justice is chairman.

**Local Government.**—The law providing for the establishment of local authorities for towns and villages is now contained in No. 16.

**Co-operative Societies.**—Previous legislation for dealing with Co-operative Societies is repealed in No. 17 which now provides for their formation and regulates their operations.

**Tourist Trade.**—The tourist trade of the Colony is to be encouraged under No. 18 by the appointment of a Development Board.

### (iii) Saint Vincent

[*Contributed by* P. Cecil Lewis, Esq., *Crown Attorney*.]

Forty Ordinances were passed during 1946, of which the most important were:

**Housing.**—The Slum Clearance and Housing Ordinance (No. 1) and the Town and Country Planning Ordinance (No. 2) which established machinery whereby the grave social problems created by the existence of slum areas and overcrowding could be tackled.

**Teachers' Pensions.**—No. 7 makes it possible for teachers' pensions to be computed on the same basis as those of civil servants.

**Law Library.**—No. 8 places the Law Library on a statutory basis and provided for the appointment of a Committee of management and control consisting of the Chief Justice, the Puisne Judges, the Crown Attorney and the Registrar as *ex officio* members and two members to be appointed by the Governor for a period of two years.

**Income Tax.**—No. 12 introduces important amendments and additions to the Income Tax legislation (*a*) clarifying the basis of assessment in any year; (*b*) authorizing, as regards certain incomes taxed also in the U.K., the grant of additional relief in the Commissioners' discretion; (*c*) securing against income reduction through artificial or fictitious transactions by individuals or non-distribution of full profits to shareholders by Companies and (*d*) providing for the effective assessment of persons leaving the Colony and for recovery of tax in certain other cases.

**Loan.**—No. 15 authorizes a local loan of £50,000 for the purpose of purchasing land for Land Settlement Purposes, for establishing a water supply for Kingstown and its neighbourhood and for purchasing machinery to supply electric current to Georgetown.

**Land Acquisition.**—No. 22 repeals the 40 year old Land (Acquisition for Public Purposes) Ordinance and introduced new features in the land acquisition legislation of the Colony.

## 6. TRINIDAD AND TOBAGO

[*Contributed by* H. W. Wilson, Esq., B.A., LL.B., *Attorney-General*.]

Sixty-one Ordinances were passed during the year 1946, of which the following are the more important:—

**Corporal Punishment.**—No. 1 re-introduces the imposition of sentences of

corporal punishment on offenders above the age of 16 years for certain offences for a period of two years.

**Merchant Shipping.**—No. 2 provides for the examination of, and the grant of certificates of competency to masters, mates and engineers of intercolonial ships.

**Census.**—No. 9 provides for the taking from time to time of a census of the Colony and in particular for a census on April 9, 1946, in conjunction with eight other West Indian Colonies.

**Legislative Council.**—No. 10 provides for the registration of persons entitled to vote at elections of members of the Legislative Council and to regulate the procedure at such elections. The Ordinance also introduces adult suffrage for British subjects.

**Special Reserve Police.**—No. 14 replaces the Defence (Special Reserve Police) Regulations, 1942, under which a special reserve police force was established and provides for the continuation of the force on a permanent basis.

**County Councils.**—No. 18 replaces the County Councils Ordinance, 1945, in which the electoral procedure laid down was based on the provisions of the Legislative Council Ordinance Ch. 2 No. 2 and introduces the procedure contained in the Legislative Council (Elections) Ordinance, 1946.

**Adoption of Children.**—No. 31 provides for the adoption of children and the setting up of an Adoption Board which will receive applications from parents, guardians and adopters in respect of the adoption of children; make investigations concerning the adoption of children for the consideration of the Court and act as guardian *ad litem* of any child in respect of whom an adoption order is sought.

**Hotels.**—No. 36 is designed to encourage the extension of the hotel industry in the Colony by granting relief in respect of customs duties, excise duties and income tax to persons who expend moneys upon the construction or equipment of hotels in the Colony and for purposes connected therewith or incidental thereto.

**Municipal Elections.**—No. 43 prevents the nomination of persons as candidates for election without their knowledge or consent, makes provision for the appointment of one or more subsidiary polling stations for any Ward for the purpose of relieving congestion at polling stations and also for the extension of the hours of voting and the period for the counting of votes.

**Factories.**—No. 44 introduces into the Colony factory legislation based on the United Kingdom Factories Act, 1937, establishes an inspectorate for factories and gives inspectors the powers necessary for the performance of their duties.

**Gas Cylinders.**—No. 45 is designed to secure safety in the use, storage and conveyance of cylinders containing gases in a compressed state and is based on the Gas Cylinders (Conveyance) Regulations, 1931, of the United Kingdom.

**The Judicature.**—No. 51 provides for the appointment of liability in cases of contributory negligence and empowers the Court to assess compensation under the Workmen's Compensation Ordinance where the workman so elects.

**Production of Cane.**—No. 61 replaces the Production of Cane Ordinance, 1944, and ensures that the practice of making contracts between farmers and manufacturers which previously existed and which it is regarded as important to preserve is continued under the Ordinance. The Ordinance also contains a revised formula for the calculation of the price of farmers' canes.

## XIII. MEDITERRANEAN

### 1. GIBRALTAR

[*Contributed by* C. G. Ross, Esq., *Attorney-General.*]

Twenty-two Ordinances were passed during the year 1946, the most important of which were the following:—

**Repatriation of the Civilian Population.**—An Ordinance (No. 5) set up a

Resettlement Board to be the authority for repatriation and resettlement, with powers to provide lodging and meals and to hold land previously requisitioned under the Defence Regulations, 1939. An indemnity Ordinance (No. 11) was deemed necessary in respect of acts previously done under this heading.

**Price Control.**—The life of the Price Control Ordinance, 1941 (No. 9) was by No. 6 prolonged to be co-existent with the Supplies and Services (Transitional Powers) Act, 1945.

**Registration of Newspapers.**—All papers containing public news, or intelligences or observations thereon, must register the address where they are printed and the names and addresses of the printer, publisher and proprietor.

**Probation.**—By No. 16 the Criminal Justice Administration Ordinance has been amended to provide for the appointment of, and to regulate probation officers and the making of probation orders.

## 2. CYPRUS

[*Contributed by the* HON. STELIOS PAVLIDES, K.C., *Attorney-General.*]

**Juvenile Offenders.**—Altogether twenty-seven Laws were enacted in Cyprus in 1946 but, as a subject of social legislation during that year, the first place belongs to the Juvenile Offenders Law, No. 23, which consolidates and amends the Juvenile Offenders Laws, 1935 and 1945. One of its main features is the introduction of a probation service in connection with young delinquents; this service will be conducted by probation officers appointed by the Governor and Courts are now empowered to discharge a juvenile offender on his entering into a recognizance on condition that he will, during a specified period, be under the supervision of a probation officer whose duty will be, *inter alia,* to visit, advise, assist and befriend the juvenile offender and endeavour, when necessary, to find him suitable employment.

A new feature is the power given to the Governor to declare a school, institution or residence, other than a reform school, to be an approved residence. An approved residence will be a kind of hostel where suitable children and young persons will enjoy more freedom and will be generally afforded more opportunities for further reform, before they obtain their full discharge.

**Greek Church.**—The year also saw the repeal by No. 20 of the Autocephalous Greek-Orthodox Church of Cyprus (Archbishop's Disqualifications) Laws, 1937, and the Autocephalous Greek-Orthodox Church of Cyprus (Governor's Approval of Archbishop) Law, 1937, which had been held to stand in the way of the election of an Archbishop in Cyprus.

**Crime.**—The Outlaws Proclamation Law (No. 1) and the Forest (Protection against Incendiarism) Law, No. 13, though both of temporary application, have proved very effective in combating lawlessness.

The former was expressed to remain in force until February 3, 1947, and has proved very efficacious in securing the arrest of five fugitives from justice who, for a number of years, had terrorized a part of the Paphos District.

The latter enables the Governor to order the detention of any person, being an inhabitant of any of the villages mentioned in the Schedule to the Law, as regards whom there is reasonable cause to believe that he has been or is concerned or implicated, whether directly or indirectly, in the outbreak of a fire in any forest; this Law is expressed to remain in force up to July 24, 1947, but may be continued for a further period or periods of twelve months by an Order of the Governor-in-Council.

**Immigrants.**—The Detention of Illegal Immigrants Laws (No. 15 amended by No. 16) were enacted during the year with the object of assisting His Majesty's Government in its efforts to stem the influx of illegal immigrants to Palestine, a

matter which had assumed a particularly grave aspect on account of the troubled conditions in that neighbouring territory. These Laws give power to the Governor to order that persons who are certified by the officer in charge of the escort as being persons who intend to enter Palestine against the Palestine Immigration Ordinance, 1941, may be detained in such place in the Colony as may be specified in the Order. A number of such persons are now detained under the provisions of these Laws in a camp in the Famagusta District.

**Streets and Buildings Regulation.**—No. 12 incorporated, in an amplified form, several provisions relating to control of buildings and lay-out of streets hitherto contained in the Municipal Corporations Laws, the Construction of Buildings, Streets and Wells on Arazi Mirié Laws and the Summer Resorts (Development) Law, 1938, which were correspondingly repealed.

It was originally intended that the measure should also contain full provisions on town planning. Town planning, however, cannot be put on sound foundations without expert staff and advice which, in the present post-war acute shortage of qualified personnel, it was not found possible to secure and it was necessary to proceed with the present Law consequent upon the coming into operation on September 1, 1946, of the Immovable Property (Tenure, Registration and Valuation) Law, 1945; as already known, that Law abolishes the various categories of land and it was, therefore, imperative that the control over building operations, which depended not on the location of the particular area but on the category of a particular land, should be unified so that the whole of every particular area should come under the single control of one and the same authority irrespectively of the category of the lands comprised therein.

The Law makes provision for appropriate authorities to operate within the Colony; in municipal areas, the appropriate authority is the municipal council of such area; in non-municipal areas, the appropriate authority is the Commissioner of the District or a Board appointed by the Governor with the Commissioner as Chairman; where the area is a summer resort, the Governor may appoint the Board operating in such resort to be the appropriate authority.

Elaborate regulations have been promulgated in supplementation of the provisions of the Law, in consultation with the municipal councils of the various town municipalities.

**Rent Restriction.**—No. 11 has introduced important amendments to the principal Law. Landlords are permitted to increase rentals without reference to the board, by an amount not exceeding 15 per cent. in the case of dwelling houses and schools and 25 per cent. in the case of all other premises, over and above the rent paid on March 1, 1941; landlords who desire to increase the rent by an amount over these percentages may apply to the board who are given full power and discretion to fix any rent as they may consider reasonable, having regard to all the circumstances of each particular case; landlords and tenants are also permitted to contract out of the Law and to make binding agreements for the payment of any rent, without restrictions and without reference to the board.

Other Laws which may be mentioned are—

**Income Tax.**—The object of No. 7 is to encourage capital expenditure for the provision of new plant and machinery or for the replacement of existing plant and machines by making a provision for enhanced initial allowances in the assessment of income tax in such cases, in anticipation of a post-war period of active reconstruction in industrial enterprises.

**Census.**—No. 10 re-enacted in a more appropriate form the Census Law, 1930. A census was carried out during 1947 under the new Law.

**Evidence.**—No. 14 consolidates and amends various provisions relating to evidence generally with the aim of bringing the Island's Law more into line with the English Law on the subject.

## 3. MALTA

[*Contributed by* J. M. GANADO, ESQ., LL.D.]

DURING 1946, 45 Ordinances were enacted by the Governor with the consent and advice of the Council of Government.

**Education.**—By Ordinance II every parent has the duty to cause his child to receive efficient primary instruction " in religious doctrine, in such languages and in reading and writing the same as the Governor with the approval of the Secretary of State for the Colonies may by Proclamation specify " and in arithmetic. The Director of Education or the Commissioner of Police may complain to a Court of Magistrates of Judicial Police in regard to cases of non-compliance with this Ordinance. The Court may order the child to be sent to a certified industrial school; such an order may be terminated at the end of the scholastic year by the Director of Education, if he is satisfied that it will not be prejudicial to the child's education, and detailed reasons for such decisions must be submitted to the Governor at the end of each scholastic year.

Provision is made for the appointment of School Attendance Officers and the Governor in Council is empowered to make Regulations for the purpose of carrying out the provisions of this Ordinance. He is also empowered to declare by Proclamation which areas are to be considered as Compulsory Education Areas and to establish or vary from time to time the lower and upper age limits.

According to Ordinance III, the Board of Education is to be constituted as follows: The Lieutenant-Governor, as Chairman, the Rector of the Royal University, the Director of Education, a representative of the Metropolitan Archbishop of Malta, two elected members and three other members appointed by the Governor in Council. The board's duty is to make recommendations and to give advice to the Governor on all matters connected with Education either at the Governor's request or of its own motion. The Governor in Council is authorized to make Regulations in respect of Educational Establishments which are not Government Establishments.

Ordinance IV, amending the Compulsory School Attendance Act, provides that in no case shall a child be allowed to leave school before the age of 14, if he attends a public primary school, or before the age of 16, if he attends a technical school. The parent is allowed to withdraw the child from school only if he produces a certificate issued by the head of a private school (recognized by the Director of Education), declaring that the child will be admitted in the particular private school.

**Trade Books.**—Ordinance XIII, amending Act XXX of 1927, adds the ledger to the list of trade-books to be kept by business men according to law. It states that the ledger must show an accurate and up-to-date record of all transactions classified as personal and impersonal accounts and so kept as to render possible the drawing up of a true and correct picture of the state of affairs of the business or trade at any given time.

**War Damage.**—Ordinance XXVIII established a War Damage Account, as from April 1, 1946, into which all moneys received by the General Revenue of Malta from the War Damage Commission in reimbursement of expenditure incurred by the Malta Government in making good War Damage are to be paid.. It will also be credited with any moneys that may at any time be provided by H.M.'s Government in the United Kingdom towards the expenditure for the restoration of Government property. The Ordinance also enacts that the War Damage Account will be available only for the purpose of making good war damage including the demolition and clearance of damaged buildings and sites.

Ordinance XVII, amending the War Damage Ordinance, 1943, provides that in criminal proceedings instituted by the police before the Courts of Magistrates for Judicial Police for offences against the provisions of the War Damage Ordinance, the Secretary or the Assistant Secretary to the Commission may produce

evidence, plead and otherwise conduct the prosecution instead of the police. He may also be produced as a witness and, if the Prosecution desires to produce him, he shall be heard in evidence before assuming the duties of prosecuting officer, unless the necessity of his evidence appears afterwards.

The War Damage Commission, to which another member was added by Ordinance XXVII, is empowered by Ordinance XVII to withhold any payment, if they are satisfied that such payment or part thereof is claimed in respect of works carried out in contravention of any law for the time being in force relating to buildings.

By Ordinance No. XXXVI the Director of Public Works is enabled to carry out in any area specified in the Schedule attached to the Ordinance the demolition of any building damaged by enemy or counter-enemy action and the clearance of sites containing unoccupied buildings, if he is satisfied that the building cannot be rendered habitable without carrying out extensive repairs and that the clearance of the site is necessary to allow the re-planning of the area. In regard to Ecclesiastical or Crown property, however, the Governor's approval is necessary.

Ordinance XLV extends the meaning of the terms " public purpose " used in the Land Acquisition Ordinance. The phrase now refers to any purpose connected with exclusive Government use or general public use or connected with or ancillary to the public interest or utility or with town planning or reconstruction or any purpose connected with the defence of the Island and includes any other purpose specified as public by any enactment.

The last-mentioned Ordinance also alters the Constitution of the Land Arbitration Board by providing that the board will consist of one of His Majesty's Judges, of an Architect in the employment of the Government and of an Architect not in the employment of the Government appointed by the Governor every six months. The same Architect shall in no case be appointed for more than two immediately consecutive periods.

**Emergency Regulations.**—By Ordinance XIV and Ordinance XL certain Regulations under Emergency Powers Acts as applied to Malta by Order in Council, were kept in force. In the " Objects and Reasons " published when the former enactment was proposed it is said: " Until conditions are again normal, it is considered expedient in the public interest to control supplies and services essential to the life of the community."

By Ordinance XL, the Governor is empowered to amend the Emergency Regulations and not only to repeal them in whole or in part and to consolidate any two or more such Defence Regulations.

Ordinance XI repealed Ordinance I of 1942 which was the Emergency Powers Ordinance in connection with the Removal of detained persons from the Island. It is specifically stated that the repeal shall be without prejudice to anything done or omitted to be done under the provisions of the Ordinance repealed in virtue of this enactment.

**Pensions.**—By Ordinance XVIII a Fund administered by the Government Treasurer, the Secretary to Government, and the Director of Labour and Social Welfare is created for old-age pensions, and for pensions for widows and orphans. A weekly contribution is payable by the employers and the employees, if the employment is an " insurable " one according to Regulations made under the Ordinance. The rates payable vary according to the sex and the age of the employed person.

An old-age pension is payable to any man or woman insured under the Ordinance who attains the age of 65 years and to the wife aged 65 or over of an insured man who has attained the age of 65.

This enactment is applicable also to those employed by or under the Crown unless they come already under any other pension law in force.

By Ordinance XXVI, amending the Pensions Ordinance (c. 143), it is provided that a gratuity not exceeding three-fourths of one year's salary shall be

given to the legal representatives of any Malta Government officer entitled to a retiring allowance who dies in the service of Malta. This Ordinance, however, does not apply to officers who were on probation or under an agreement at the time of death.

**Criminal Procedure.**—Ordinance XXIV repeals subsection 2 of s. 634 of the Criminal Code, in the case of trials by Jury. The relative section of the Criminal Code provides: " Nor may a person be convicted of a crime against the safety of the Government solely upon the evidence of one witness; but in such case, it shall be sufficient if one witness prove one fact and another witness prove another fact, both such facts being material to establish the crime."

**Co-operative Societies.**—Ordinance XXXIV contains detailed provisions for the regulation and control of Co-operative Societies set up under the Ordinance. No person or association of persons other than a Registered Society may without the Registrar's permission trade under name of which the word " Co-operative " forms part. Such a Society is referred to as having as its object the promotion of the general economic interests of its members in accordance with co-operative principles. Upon registration, it will be a body corporate.

When a member is indebted to the Society, a charge may be created on all agricultural or marine produce, animals, implements, stock in trade, etc., whether the thing subjected is or is not in existence at the date when such charge is made. Such charge entitles the Society to take possession of the property so subject and sell it by public auction after an interval following service of an official intimation of intention of at least five clear days, with the exception of perishable goods which may be sold immediately.

Registration of such a charge which has to be in writing constitutes a special privilege in favour of the registered Society. A special privilege will also exist upon all produce raised or taken in whole or in part by means of a loan received from the Society and on animals or raw materials, etc., purchased in whole or in part from any loan whether in money or goods given by the registered Society.

The share or interest of a member in the capital of a registered Society is not liable to attachment or sale under any judgment or order of a Court of Law in respect of any debt or liability incurred by such member nor is a curator in Bankruptcy entitled to or have any claim on such share or interest.

A certified copy of any entry in a book of the society regularly kept shall be received in any legal proceedings as prima facie evidence of the existence of such entry. At least one-fourth of the yearly net profits shall be carried to a reserve fund and in the case of those with unlimited liability the whole of the net profits shall be so carried and no distribution of profits shall be made without the general or special order of the Registrar.

Disputes that may arise are to be referred to the Registrar for decision. The Registrar may, however, refer the question to an arbitrator, or, if the issue is complicated and involves questions of law and fact, he may suspend proceedings in the matter until the questions have been determined by His Majesty's Commercial Court.

The Governor in Council is empowered to make Regulations for the purpose of carrying into effect the principles or provisions of the Ordinance.

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